Enlightening the World

Henry Churchill Semple , S.J.

American Liberty Enlightening the World

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Moral Basis of a League for Peace

By

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To

MY FRIEND

Rt. Rev. MONSIGNOR JOSEPH F. MOONEY,

V. G., P. A., D. D.

My dear Fa

Rev. H. C: Sempl
New Orl

FOREWORD

THE author was inspired to write this plea for a just and lasting peace by utterances of Pope Benedict XV such as the following:

"We beg a hearing from those at whose disposal are placed the fortunes of states. Surely there are at hand, besides slaughter, other ways and means to right wrongs if any have been done. Let these ways and means have a trial in good faith with good will, and in the meanwhile let arms be laid aside." His first Encyclical, November 1, 1914.

"In the first place, the fundamental point should be that there be substituted for the material force of arms the moral force of right; thence a just agreement of all to the simultaneous and reciprocal diminution of armaments, according to standards and guarantees to be established in the measure necessary and sufficient for the maintaining of order in each state; then in substitution for armies, the institution of arbitration with its high pacify-

ing function, according to norms to be concerted and sanctions to be established against a state which shall refuse to submit international questions to arbitration or to accept its decisions." Note to the heads of the belligerent governments, August 1, 1917.

"Does not the horrid insaneness of this war which is bringing devastation to Europe, cry out how much slaughter and ruin can come from defying the highest laws by which the mutual relations of states are regulated?" Allocution, December 4, 1916.

"When the violence of these tempestuous days has passed, your people keeping as they do, a firm hold on the principles of reasonable liberty and Christian civilization, are destined to play the chief rôle in restoring peace and order, and in reconstituting human society on the basis of these same principles." Message of Pope Benedict XV to the American People through Monsignor Cerretti.

The following is the thread of thought in this work.

There is a moral law of nature and nature's God. Its primary principles are self-evident. It binds all individuals and states. Adversaries of

this teaching grant that it has borne good fruits. Their unprincipled principle that there is no principle which can be known, logically destroys every moral obligation and makes every written law, contract, or treaty a scrap of paper.

In the opinion of the author, positive international law is law in the proper sense. It is made and promulgated by the family or society of civilized states, through usage or verbal suffrage. All law is not force. A law can be conceived and can exist and bind without any force behind it, and even without any human sanction. However, every rule of positive international law has a human sanction. Any nation that defies it, incurs the risk of punishment.

Governments derive their just powers from the consent of the governed. They are instituted to secure the inalienable rights with which the governed have been endowed by the Creator. A state which attempts to abolish private property is tyrannical and suicidal.

Our Supreme Court as the arbiter of disputes between our sovereign States and the defender of life, liberty, and property against sovereign States, or the Congress, or the President, or all of these

combined, is the unique glory of our country, and is a model for an international court of arbitration.

The above principles are here submitted to Hebrews, Protestants, Catholics, and indeed to all sober minds, as a moral basis for a just and lasting peace at home and abroad, and for American Liberty Enlightening the World.

This book is designed to be an aid to teachers and students of law, civics, ethics, and sociology, and to all anti-socialist societies, speakers, and workers. Their special attention is called to the Appendix in which Cardinal Billot defends and explains the principle of self-determination.

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American Liberty Enlightening the World

I

AMERICAN LIBERTY ENLIGHTENING THE WORLD

MORAL BASIS OF A LEAGUE FOR PEACE

POSITIVE INTERNATIONAL LAW IS LAW IN THE PROPER SENSE AND BINDS IN CONSCIENCE

THERE is a moral law of nature and of nature's God. Its primary principles are self evident truths. It binds in conscience not only private individuals but also independent states. If the moral law of nature and of nature's God did not exist, or could not be known, or did not bind in conscience individuals and states, there would be no obligation of contracts, "agreements between individuals or states to undertake to do or not to do a particular thing," and every treaty would be a scrap of paper.

Besides the natural law there exists positive

international law *making* some acts of states morally bad *because* forbidden. In other words positive international law is law in the proper sense.

A human law, one made by human authority, can be conceived and exist as a true law without any human sanction. The laws to hear Mass on Sunday and not to eat meat on Friday were made not by God but by men; not by Divine but by ecclesiastical authority. They have no human sanction such as excommunication. Yet they are laws in the proper and strict sense, are orderings of reason for the common good, and promulgated by those who have the care of the Society of the Roman Catholic Church.

However, positive international law *has* a human sanction. Any state which would defy a grave international law, commonly accepted as such, would incur the risk of excommunication by the family of civilized nations and the risk of many other serious penalties.

The society or family of civilized states has made stable rules of conduct, positive international laws binding in conscience all the members of this society or family. Positive international law has

not only human sanction but also human authority. It is thus seen to be law in the proper and strict sense.

Some authors have denied or doubted the truth of one or another of the above principles. Others have denied or doubted the truth of every one of them.

The great controversy on positive international law and especially on its sanction was stirred up by John Austin in the year 1832. He based his absurd views on his new absurd definition of law and had many followers. We hope to show that the reasons he alleged for his inventions are futile, and that, *on this point*, his followers are blind and led by the blind, and that leader and led, if logical, fall into the pit of national and international lawlessness.

How many reasons for law and order are taken away from the minds and consciences of individuals and states by each one of those doubts or denials, and especially by all of them together! Our principles safeguard in the minds of the masses and the classes all the reasons thus taken away and all those not thus taken away. Hence it is as plain as that the whole is greater or stronger than

any of its parts, that our principles *work better* and in *practice* are more conducive to law and order and peace and prosperity and happiness in nations and in the society of nations. Thus we cannot help branding each of those doubts or denials singly and all of them taken together as practically harmful.

Of course, Catholics hold and must hold that there is a moral law of nature and of nature's God, and that agreement between nations as between individuals has the obligation of contract and is morally binding in virtue of this law of nature and of nature's God; that to break a valid contract is a *malum in se*, a thing bad in itself, is immoral and is necessarily forbidden by God and is a sin. But there are in our day many writers on international law who hold that there is no natural law, or that we cannot know even its primary principles, or who say that there is *doubt* about its existence or the possibility of knowing anything about it. In this school, international agreement *logically* has *not* the obligation of contract, and is not morally binding, and every treaty is *logically* a scrap of paper. This unprincipled principle that there is no principle or at least none knowable with cer-

tainty by human reason, must be branded by us as *unspeakably pernicious*. We shall treat this point first.

That our old fashioned principles, as old as Christianity and civilization, and as old even as the creation of man to the image and likeness of God, and indeed as old as God and His Reason and Eternal Will, have borne good fruits in recent centuries, is not only granted but also proved by the testimony of our new-fangled adversaries.

Sir Henry Sumner Maine says on page 52 of his International Law: "The original reasons for the International rules are possibly to some extent *nonsense*. They often seem to us *commonplace*. They are often *rhetorical*. They are often entangled with *obsolete theories of morals* or deductions from irrelevant precedents. And on the other hand they often assume a power of discerning what the Divine pleasure is on a particular subject *which the ideas of the present day would not admit*. As to their *expediency*, that has to be decided by experience, and *experience has, on the whole, pronounced decisively in their favour*." On page 47 he had said: "Their system of rules was received by the world much as a system of morals is re-

ceived to this day in the East. No doubt it fell on soil prepared for it. The literate classes, the scholars, great parts of the clergy, and the sovereigns and statesmen of Europe accepted it, and the *result was an instant decay of the worst atrocities of war.*" On page 1 he had said that Dr. Whewell in his will and in the statute regulating the professorship held by Sir Henry, "laid an earnest injunction on the occupant of this chair that he should make it his aim, in all parts of his treatment of the subject, to lay down such rules and suggest such measures as might tend to diminish the evils of war and finally to extinguish war among nations." It is hard for us to see how Sir Henry considered himself faithful to his trust, and how he made it his aim to lay down rules and suggest such measures as might tend to diminish the evils of war, and finally to extinguish war among nations, when he actually made it his aim to take out of the minds of the literate classes, the scholars, great parts of the clergy, and the sovereigns and statesmen of the world, reverence for principles which according to his own confession had resulted in the almost instant decay of the worst atrocities of war. This "Late Master of Trinity Hall, Cambridge"

here convicts himself as a pastmaster of the rhetoric of abuse by calling the original reasons for the International rules bad names like "nonsense," "commonplace," "rhetorical" etc.

He thus stigmatizes the science of international law of which he rightly says Grotius was the Father. From his index of names we find that he refers to Grotius fifteen times and to Suarez not even once. Grotius was born in 1583 and died in 1645. Suarez was born in 1548 and died in 1617. The truly great work of Grotius, *De Jure Belli et Pacis*, was first published in 1625. The truly great work of Suarez *De Legibus* was first published in 1611, that is, fourteen years before. Father Louis de Angelis, a Provincial of the Franciscans, as first official censor, in giving his *nihil obstat*, wrote of the book; "the author treats and solves the difficulties of this matter with his usual consummate learning," "with a splendor of learning unsurpassed by anything I have seen." Father Vincent Pereira of the Order of St. Dominic, as the other official censor, wrote: "The work is worthy of its author; in it there is more that gladdens the eye than tongue can tell, as St. Ambrose says about Light." It is significant that this high

praise of a Jesuit was given by a Franciscan and a Dominican.

As we read in the Catholic Encyclopædia, Suarez taught for forty years at Avila, Segovia, Valladolid, Rome, Alcala, Salamanca, Coimbra. Pope Gregory XIII, the reformer of the calendar, attended his opening lecture at Rome. Pope Paul V, whose name extends all across the façade of St. Peter's, selected him as the champion of Rome, against James I, the British Solomon, and his divine right of Kings. Paul V, in four papal constitutions, also gave him the title of Doctor Eximius, the doctor who excels, the title given him also by Benedict XIV, one of the greatest lawyers of history. Philip II of Spain sent him to teach at Coimbra to give prestige to that university. Grotius recognized him as one of the greatest theologians and as a profound philosopher. Mackintosh considered him one of the founders of the science of international law. "Suarez" classes were established in the universities of Valladolid, Salamanca and Alcala. His works were published in his own day at Lyons, Salamanca, Madrid, Coimbra, Mayence, Cologne, Paris, Evora, Genoa. A wing of the old Jesuit college at Salamanca was

rebuilt from his royalties. The honor in which the Doctor Eximius was held by King Philip and by Popes Gregory and Paul and by the Father of the science of international law, parallels the honours heaped by St. Louis and Pope Urban and the Doctor Seraphicus on the Doctor Angelicus, the Angel of the Schools. On page 346 of his Elements of Jurisprudence, Mr. Thomas Erskine Holland says: "The true nature and functions of international law *have never been better described* than in the following passage, in which they were for the *first time* adequately set forth in the early years of the seventeenth century by Suarez." That passage, and others which complete it, will be cited further on in this paper. Like praise has of late been given to Suarez in English, Irish or American high-class reviews in articles on the present world war and the future League of Nations. The Carnegie Institute, as we have heard, has employed some American priests to translate into English the whole tome "De Legibus."

Why, after treating with contempt the science of international law and its acknowledged Father, Hugo Grotius, Sir Henry Maine, K. C. S. I. cavalierly treated this illustrious Spaniard and Catholic

and Jesuit as one *beneath* his contempt, we do not venture to decide. These facts have been recalled to prepare the mind of the reader to appreciate the value of extracts which will be cited from Suarez, and to weigh them with the attention, benevolence and docility which are their due.

Let us hear another advocate of the modernistic principles of international law who confesses that *our old fashioned* principles *were* beneficial when they were believed and practiced. In his Principles of International Law, page 47, Mr. T. J. Lawrence says: "But *untenable as is the theory of a Law of Nature*, it *performed a great service to humanity* when it induced the statesmen and rulers of Europe to accept the system of International Law put forth by Hugo Grotius. They had all been taught that *Natural Law was specially binding* in its character, and believed that *men could not violate it without sinking to the level of the beasts.* When they found it applied by a great thinker to the regulation of international relations, and discovered that, so applied, it forbade the practices of which they were more than half ashamed, and placed restraints upon that unchecked fury which *turned central Europe into a veritable pandemonium,*

they were disposed to welcome and adopt it. *The times were out of joint.* The old principles which had regulated the state relations of mediæval Christendom, were dead. *The attempt to get on without any principles at all had been a costly and blood-stained failure.* New (?) principles were presented clothed with all the authority of admitted theory. It is not to be wondered at that they were eagerly received, and became in a short time the foundations of a new international order. *In so far as they are theoretical and connected with nature and Natural Law, we have already examined them and found them wanting.* But we have yet to discuss them *on their practical side,* and in this aspect we shall discover that they are *worthy of the highest admiration.*"

We read on page 40: "It is impossible to attempt here an account of the origin and growth of the ideas which cluster round the notion of nature and her law. They had their birth in ancient Greece, (?) and they are still alive and active today, though their vigour is not so great or the acceptance of them so general, (?) as it was when Hugo Grotius wrote; "the principles of Natural Law, if you attend to them rightly, are of *them-*

selves patent and evident almost in the same way as things which are perceived by the external senses." Such a statement as this takes away the breath of a modern jurist; (?) but when it was first (?) given to the world, no one thought it extravagant, because everyone who reasoned at all upon the problems of society, accepted without reserve the theory of a Law of Nature. On this point, even *Catholic and Protestant agreed. The Jesuit casuist* Francisco Suarez, and the Oxford civilian, Albericus Gentilis, were alike in this, that they regarded nature as a lawgiver and endeavoured to interpret what they deemed her just and simple precepts to a world which stood sorely in need of them."

Our edition of this work is inscribed *To My American Pupils.* The author is T. J. Lawrence, M.A. LL.D. Rector of Girton, and Lecturer in Downing College, Cambridge, England; Associate of the Institute of International Law; Lecturer in Maritime Law at the Royal Naval College, Greenwich; lately University Extension Professor of History and International Law in the University of Chicago, U. S. A.; sometime Deputy Professor of International Law in the University of Cambridge, England. Mr. Lawrence is the author also

of *A Handbook of Public International Law.* "A few weeks after this little book was first issued it was adopted by the British Admiralty for the officers of the Royal Navy." Its first words are: "*International Law may be defined as the rules which determine the conduct of the general body of civilized States in their dealings with each other.*" On page 2 of the larger work the author says of this same definition: "It regards International Law, not as an instrument for the discovery and interpretation of a *transcendental rule of right binding upon states as moral beings* whether they observe it or not in practice, but as a science whose chief business is to find out by observation the rules actually followed by states in their mutual intercourse and to classify and arrange these rules by referring them to certain fundamental principles on which they are based." On page 5 he says: "It is quite true that modern *International Law grew up among nations which professed Christianity*, and that many of its chapters should have to be very differently written if *Christian* influences had been absent from their formation."

Mr. Lawrence is a deservedly honoured specialist on what these rules are. He promised to leave to

others the questions whether and why they are rules of right, binding upon states as moral beings. If he had not broken this promise, this good lawyer or legalist would not have shown himself to be a poor philosopher. It is hard to gather from his rhetoric, what, if anything, he would give us after he has taken away from us the principles of natural morality agreed on, in the day of Grotius by Catholic and Protestant. We beg leave to submit that these principles are agreed on still by all Catholics and likewise by all Protestants who follow the doctrine of St. Paul and even by all Gentiles "who show the work of the law written in their hearts." As an observer of facts we cannot accept his allegation that this statement of Grotius takes away the breath of a modern jurist. Lord Charles Russell was, and Chief Justice Edward Douglas White is, a modern jurist. All of the Justices of our United States Supreme Court have been and are modern jurists and all of them must hold that there is a natural moral law binding individuals and states, and that this law was made by nature's God and that its first principles are self-evident truths. How sad to see Cambridge University and many other Universities not only

German, but also English, French, Italian and American, countenancing the unprincipled principle that there is no moral principle, and thus logically *dechristianizing* and *denaturing* individuals, families and states and the family of civilized states, and thus logically turning all treaties into scraps of paper. However, here is a witness who is not a partisan of the principles of natural law and Christianity. *His* testimony to the *fact* that these principles long worked well for the greater happiness of the greater number of civilized nations, is thus seen to be unpartisan and to have weight in proportion to his scorn for them.

Let us suppose the case of an individual who repudiates the following laws of nature, "thou shalt not take the name of the Lord thy God in vain; honour thy father and thy mother; thou shalt not kill; thou shalt not commit adultery; thou shalt not steal; thou shalt not bear false witness; thou shalt not covet thy neighbour's wife; thou shalt not covet thy neighbour's goods." Such an individual does sink to the level of beasts, and all human beings except savages have ever known that they are bound by these natural laws, and this belief has *not* ceased since the age of

Grotius. That these principles are not only useful but necessary for the happiness and even for the preservation of man and nations, ought to be accepted as overwhelming proof that they are participations of the Divine Reason and Eternal Will of the Father Almighty, the Creator of heaven and earth, the King of kings and Lord of lords, who made every man to His image and likeness to be happy and showed us what is morally good by signing on us the light of His countenance, and commanded the natural order, conformity to right reason and our rational nature, to be conserved and forbade it to be disturbed, and sanctions obedience to His natural law and order by present happiness and disobedience to it by present misery.

Readers may be pleased to see with their own eyes those fundamental principles which are granted to have worked so well in recent centuries. In *The Rights of War and Peace including the Law of Nature and of Nations* by Hugo Grotius in Book I, Chapter I, paragraph 10, we read: "Natural right is the dictate of right reason, showing the moral turpitude or moral necessity of any act from its agreement or disagreement with a rational

nature, and consequently that such an act is either forbidden or commanded by God, the Author of nature. The actions, upon which such a dictate is given, are either binding or unlawful in themselves, and are thence understood to be necessarily either commanded or forbidden by God. This mark distinguishes natural right, not only from human law, but also from that law which God himself has been pleased to reveal and which has been called by some the voluntary divine right and which does not command or forbid things either binding or unlawful in themselves but makes them unlawful by its prohibition and binding by its command. We must further remark that natural right relates not only to those things that exist independently of the human will but also to many things that necessarily follow the exercise of that will. Thus property, as now in use, was first a creature of the human will. But after it was established, one man was prohibited by the law of nature from seizing the property of another against the latter's will. Wherefore Paulus the Lawyer said that theft is expressly forbidden by the law of nature. Ulpian condemns it as infamous in its own nature. The law of nature is so unalterable that it can-

not be changed even by God Himself. For although the power of God is infinite, yet there are some things to which it does not extend. Because the things so expressed would have no true meaning but imply a contradiction. Thus two and two must make four nor is it possible to be otherwise. Nor again can what is really evil not be evil. And this is Aristotle's meaning when he says that some things are no sooner named than we discover their evil nature. Of this kind is the evil of certain actions in relation to the nature of a reasonable being. Therefore God himself suffers his actions to be judged by this rule, as may be seen in Gen. xviii, 25; Isaiah v, 3; Ezek. xviii, 25; Jer. ii, 9; Mich. vi, 2; Rom. ii, 6; iii, 6.—Cicero in his work of offices says we do not talk of the justice of horses or lions. Lactantius says that in all animals devoid of reason we see a natural bias of self love. For they hurt others to benefit themselves, because they do not know the evil of doing hurt. But it is not so with man, who possessing the knowledge of good and evil, refrains even with inconvenience to himself, from doing hurt.

"The existence of the law of nature is proved by two kinds of argument, *a priori* and *a posteriori*, the

former a more abstruse and the latter a more popular method of proof. We are said to reason *a priori* in this matter when we show the agreement or disagreement of anything with a reasonable or social nature; but *a posteriori* when without absolute proof but only with probability a thing is inferred to accord with the law of nature by its being received as such among all, or at least the more civilized nations. For a general effect can arise only from a general cause. Now scarcely any other cause can be assigned for so general an opinion, but the *common sense*, as it is called, of mankind. We said the more civilized nations. Some nations are so strange that no fair judgment of human nature can be formed from them. With men of a right and sound judgment natural justice is unchangeable. It does not alter the case if men of disordered and perverted minds think otherwise. He who should deny that honey is sweet, because it appears not so to men of a disordered taste, would be wrong. Aristotle says we are not to take our idea of man's nature from a corrupt man.

"It has been already remarked that there is another kind of right which is the voluntary right

deriving its origin from free will and it is either human or divine."

Book 2, chapter 77, paragraph 4: "There may be two kinds of alienation, one of our property, another of a certain portion of our liberty. Under the former kind we may class the promises of gifts, and under the latter the promises of doing certain actions. On this subject we are supplied with noble arguments from the divine oracles which inform us that God himself who cannot be limited by *established* rules of law, would act contrary to his own nature, if he did not perform his promises. (Nehem. ix, 8; Heb. vi, 18; x, 23; 1 Cor. i, 19; x, 13; 1 Thess. v, 24; 2 Thess. iii, 3; 2 Tim. ii, 13.) From whence it follows that the obligations to perform promises spring from the nature of that unchangeable justice which is an attribute of God, and is common to all who bear his image in the use of reason. Hence a promise is called by the Hebrews a bond or chain and is compared to a vow. (Numb. xxx, 4.)"

Have Catholics and all Bible Christians and all sane men ever held the above principles as not only true but dictated by common sense and self-evident? Yes, and those who like Maine and

Lawrence deny or doubt it in some passages, suppose it in the many others where they teach that there *is* such a thing as justice, *natural justice known by reason* apart from human statute law. The very existence of courts of equity supposes it. The international courts of The Hague always suppose that there *is* natural morality and that its first principles are known and agreed on by all.

Let us now hear another illustrious witness who is our friend and as such incurred the special enmity of Bentham and Austin, the precursors of Maine and Lawrence. We love this old friend all the more for the agnostic enemies he made.

In the introduction of Blackstone's *Commentaries* we read: "These are the eternal immutable laws of good and evil to which the Creator himself in all his dispensations conforms; and which he has enabled human reason to discover, so far as they are necessary for human actions. Such among others are these principles: that we should live honestly" (in the sense of the Latin *honeste* and of Pope's oft quoted and rarely understood line, "an honest man's the noblest work of God"), "should hurt nobody and should render to every one his due; to which three general precepts Justinian has reduced

the whole doctrine of law." "This law of nature being coeval with mankind and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe in all countries, and at all times: no human laws are of any validity, if contrary to this; and such of them as are valid derive all their force, and all their authority, mediately or immediately from this original." "As the moral precepts of this" (revealed or divine) "law are indeed of the same original with those of the law of nature, so their intrinsic obligation is of equal strength and perpetuity." "These" (moral) "precepts, when revealed are found upon comparison to be really a part of the original law of nature, as they tend in all their consequences to man's felicity." "But in relation to those laws which enjoin only positive duties, and forbid only such things as are not *mala in se* but *mala prohibita* merely, etc."

This Introduction was first published in 1758. The preface to the whole work is dated 2 November, 1765. Edward Robertson in his article on Blackstone in the Britannica says: "He propounds in terms a fallacy (?) which is (?) perhaps not yet quite expelled from courts of law, viz., that munici-

pal or positive laws derive their validity from the so-called law of nature or law of God." "To this day Blackstone's criticism of the English Constitution would probably express the most profound political convictions of the majority of the English people. Long after it has (?) ceased to be of much practical value as an authority in the courts, it remains the arbiter of all public discussions on the law or the constitution. In such occasions the *Commentaries* are apt to be construed as strictly as if they were a code."

As Edmund Burke informs us, almost as many copies of the first edition of these *Commentaries* were sold in the American Colonies as in Great Britain. According to the Standard Dictionary, the latest edition of Blackstone in England is of 1844, but there is a recent American edition of 1888. Is there one American lawyer who has not read Blackstone or at least his Introduction? Has one American court ever repudiated these principles of Blackstone which are the principles of Jefferson and of the Declaration of Independence, that there *are* moral "laws of nature and of nature's God" and that all men are *created* equal and that they are endowed by their *Creator with*

certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that to *secure* these rights governments are instituted among men and that *these truths are self-evident?* Suppose Mr. T. J. Lawrence had given forth the above unprincipled principles of his Principles of International Law, not as transcendental hypotheses in a book, or in an oral lecture inside the walls of a classroom, but as practical rulings from the bench of an American court, especially of a court held west of the Appallachian Mountains or south of the Mason and Dixon line. It almost takes away *our* breath to think what might have been his fate at the hands of modern American jurists. A judge who from the bench would scoff at these principles would be in danger of being treated like a judge who from the bench would spit on our flag.

Washington's Farewell Address is usually published in American books as an appendix to our Constitution. Its authority on the above points for the average American mind, and every American judge, is a close second to that of the Declaration of Independence. In it we read: "Of all the dispositions and habits which lead to political

prosperity, *Religion and Morality are indispensable supports. In vain would that man claim the tribute of Patriotism, who should labour to subvert these great pillars of human happiness, these firmest props of the duties of Men and Citizens.* The mere Politician, equally with the pious man, ought to respect and cherish them. *A volume could not trace all their connections with private and public felicity.* Let it simply be asked, where is the security for property, for reputation, for life, if the sense of religious obligation *desert* the oaths, which are the instruments of investigation in the Courts of Justice? And let us with caution indulge the supposition, *that morality can be maintained wit out religion.* Whatever may be conceded to the influence of refined education on minds of peculiar structure, *reason and experience both forbid us to expect, that national morality can prevail in exclusion of religious principle.*

"It is substantially true, that virtue or morality is a necessary spring of popular government. The rule, indeed, extends with more or less force to every species of free government. Who that is a sincere friend to it, can look with indifference upon *attempts to shake the foundation of the fabric?* . . .

"Observe good faith and justice towards all Nations; cultivate peace and harmony with all. Religion and Morality enjoin this conduct; and can it be, that good policy does not equally enjoin it?"

Mr. T. J. Lawrence and Sir Henry S. Maine grant that good policy but seem to deny or doubt that religion and morality or morality founded on religious principles enjoin good faith and justice and the culture of peace and harmony among nations.

On the second page of *Commentaries on American Law* by Chancellor James Kent we read: "It would be improper to separate international law entirely from *natural* jurisprudence, and not to consider it as *deriving much of its force and dignity and sanction, from the same principles of right reason*, and the *same view of the nature and constitution of man, from which the science of morality is deduced. There is a natural and a positive law of nations.* By the former, every state, in its relations with other states, is bound to conduct itself with justice, good faith, and benevolence; and this application of the law of nature has been called by Vattel, the necessary law of nations, because nations are bound by the *law of nature* to observe it; and it is

termed by others, the internal law of nations because it is *obligatory* upon them in point *of conscience.*

We ought not, therefore, to separate the science of public law from that of ethics, not to encourage the *dangerous suggestion*, that governments are not as strictly bound by the obligations of truth, justice, and humanity, in relation to the other powers, as they are in the management of their own local concerns. States or bodies politic are to be considered as moral persons, having a public will, *capable and free to do right and wrong*, inasmuch as they are collections of individuals, each of whom carries with him into the service of the community the same *binding law of morality and religion which ought to control his conduct in private life.* The law of nations, so far as it is founded *on the principles of natural law*, is equally binding in every age and upon all mankind. But the *Christian* nations of Europe and their descendants on this side of the Atlantic, by the vast superiority of their attainments in arts and science and commerce, as well as in policy of government; *and above all by the brighter light, the more certain truths and the more definite sanction which Christianity has communicated to*

the ethical jurisprudence of the ancients, have established a law of nations peculiar to themselves. They *form together a community of nations, united by religion, manners, morals, humanity, and science, and united also by the mutual advantages of commercial intercourse, by the habit of forming alliances and treaties with each other, of interchanging ambassadors, and of studying and recognizing the same writers and systems of public law.*"

This work was first published in 1826, but was cited by Sir Henry S. Maine in his International Law first published in 1888, as a decisive authority on the American view of the essence and concept of *positive* international law as binding on the United States and on all civilized nations even prior to their separate consents. Mr. Lawrence on page 93 mentions Kent as one of those "who have found an honoured place in the long array of names adorning the annals of international jurisprudence and who have done no ignoble service in the cause of peace and justice," and he elsewhere says that a writer on this subject should be a judge and a philosopher. He should also be a Christian. Kent here shows himself all the greater judge and all the greater philosopher because he wrote like a Christian (as

Grotius and Suarez had done), and based his science on principles on which all Catholics and all Bible Protestants not infected by Modernistic Higher Criticism have always substantially agreed.

The reader's closest attention is called to the lines "*deriving the force and dignity and sanction of natural morality and natural law from principles of right reason and of the nature and constitution of man.*" What is man according to his nature and constitution or constitutive elements? He is a social rational animal. When is a human, a voluntary or free action, morally good or honest? When it has the relation of conformity to right reason, to man's rational nature. Did the Creator in making man, command him in his deliberate operations always to act by right reason, according to his rational nature? Yes and the Creator was obliged, not forced but morally necessitated, by His own Divine Reason and Eternal Will, to command man to conform all his free acts to right reason and his own rational nature, to observe this reasonable natural order and not to disturb it. Man is thus bound by natural law not to act contrary to humanity, prudence, justice, fortitude, or temperance. What is a philosophical sin? It is an act contrary to our

right reason and our rational nature, considered apart, by *abstraction*, from God's prohibition of that act. What is morality without God, in the sense of the term as now widely used? It includes a *positive denial or doubt* that God exists or that He has commanded morality or forbidden immorality. What is a sin in the proper sense, a theological sin? It is an act contrary to right reason considered as also forbidden by God. Is man essentially and specifically different from a beast, as for instance the monkey or ass? Yes, by his rational or intelligent nature and his free will. If he willfully acts not according to right reason but according to his inordinate animal appetites, he acts like a beast. Why are we bound to be moral? Inchoatively or incompletely by our rational nature, completely by both our rational nature and our Creator's command to conform to it. Thus he who either holds that man is a monkey or ass and has not a rational nature with intelligence and free will, or on the other hand holds that there is no God, or that we cannot know that there is a God, must logically hold that there is no natural law and no real moral obligation even for an individual to keep his word or for a nation or a League of Na-

tions to keep a contract or agreement to do or not to do a particular thing. Those who deny or doubt that there is a natural law, at least usually deny or doubt one of *these truths*. Does the Bible clearly and explicitly teach that there is a natural law, an ordinance of reason made and promulgated for the common good of mankind by Him who has the care of the individuals and of the community of mankind? Yes, in well-known passages of Genesis, Wisdom, Psalms, or Romans.

Are these rudiments taught as American principles not only by the Fathers of our Constitution like Jefferson, and Washington, and by its earlier interpreters like Chancellor Kent, but also by its present interpreters in our Federal and State Courts? Certainly. The following words of the great *modern jurist*, Mr. Justice Field, are found in his concurring opinion in Butchers' Union, etc., Co., *v.* Crescent City, etc., Co. 111 U. S. 746: "As in *our intercourse with our fellowmen certain principles of morality are assumed to exist, without which society would be impossible*, so certain inherent rights lie at the foundation of all governmental action, and upon a recognition of them alone can free institutions be maintained. These inherent

rights have never been more happily expressed than in the Declaration of Independence, that new Evangel of liberty to the people: 'We hold *these truths to be self-evident,*'" that is, so plain that their truth is recognized from their mere statement; "that all men are endowed," not by Edicts of Emperors or decrees of Parliament or Acts of Congress, but "by their Creator, with certain inalienable rights"; that is, rights which cannot be bartered away or given away or taken away except in punishment for crime; "and that among these are life, liberty, and the pursuit of happiness and, to *secure* these"; not *grant* them but *secure* them, "governments are instituted among men deriving their just powers from the consent of the governed."

The opinion of Justice Owen of the Supreme Court of Oklahoma, seven other Justices concurring, and the ninth not participating because he considered himself as a Catholic, a party in the suit, was handed down only a few months ago in the celebrated Altar Wine Case. He cited Mr. Justice Brewer of the United States Supreme Court who delivered the opinion of the Court in the case of Holy Trinity Church *v.* United States. "No purpose of action against religion can be imputed

to any legislation, state or national, because *this is a religious people. This is historically true.* From the discovery of this continent *to the present hour there is a single voice making this affirmation.*" We see this on our coins in the motto "in God we trust."

Justice Owen then continues: "In the constitutions of the various states we find the *constant recognition of religious obligations.* We find language which either directly or by clear implication *recognizes a profound reverence for religion,* and an assumption that *its influence is essential to the well being of the community.* The preamble of our own Constitution is:

"*Invoking the guidance of Almighty God,* in order to secure and perpetuate the blessings of liberty; to secure *just* and *rightful* government; to promote our mutual welfare and happiness, we, the people of the State of Oklahoma, do *ordain* and establish this Constitution."

In nearly everyone of President Wilson's notes on the present war and the future peace, we see references to the laws of nature and nature's God, to the self-evident truth that by this natural law every man has been endowed by the Creator with certain inalienable rights which governments have

been instituted to secure and which the League of Nations must guarantee. His final words in his reply to Pope Benedict are noteworthy: "God grant it (*peace based upon justice and fairness and the common rights of mankind*), may be given soon and in a way to restore the confidence of all peoples everywhere in the faith of nations and the *possibility* of a covenanted peace."

Peoples everywhere had lost confidence in the faith of nations, in their conscientious fidelity to their sacred word of honour solemnly pledged in treaties. In many otherwise great universities founded, endowed, supported, fostered or favoured by Governments, there had been taught the unprincipled principle that there is no principle, or none that is knowable, and that morally binds States or even individuals. The fact that this unprincipled principle was known to have been instilled into the minds of many who were in high places may have gone far to shake the mutual confidence of governments. Our President's slogan is in substance, "restore all things in God." It is close kin to the slogan of Pius X, "restore all things in Christ."

In his memoirs Benjamin Franklin makes the

following confession. For a time that philosopher held and expressed the view that there is no morality or none that is knowable and he persuaded one friend to become his disciple in that school of thought. It soon came to pass that the disciple borrowed money from the philosopher and afterwards refused to pay or to own that he was morally bound to pay. This experience opened the philosopher's eyes and converted him back to the faith of the age of Adam and Cain and Abel and the whole human race—back to common sense.

At the outset we pledged ourselves to show, that a *human sanction* is not necessary for a human law to be conceived or to exist; and that a human law, in general, or a positive international law, in particular, could be a law in the proper and strict sense, even though its maker inflicted or threatened no evil upon its breaker. Some Catholic scholars disagree with us here and think that human sanction is more requisite for a human, civil, or criminal law than we can grant. Far from us to leave readers under the impression that those scholars are responsible for our opinion which should be judged only by its authorities and reasons.

In his *Principles of International Law*, on page

10, Mr. Lawrence cites John Austin's definition of law in its widest sense, as "a rule laid down for the guidance of an intelligent being by an intelligent being having power over him." On page 12 Mr. Lawrence explains: "Austin gives *prominence* to the idea of *force*. A law is a precept which you can be *compelled* to obey. He who can bring evil upon you, can set you a law. You are under a law when you are impelled by the fear of evil to observe another's command." In our judgment Austin makes *all law force and nothing but force*, at least if he wishes us to take his definition at its face value. If we can trust as accurate the reports, by our New York papers, of a speech, by a prominent citizen, made here not so many months ago, he began with the words: "*All law is force. International law has no force behind it. Therefore it is not law.*" That orator seems to have taken his idea from Austin.

How does St. Thomas define a law? We read in 1. 2. q. 90. a. 4. "From the four above points there can be gathered the *definition* of a law which is nothing else than *an ordinance of reason (made) for the common good, and promulgated by him who has the care of the community.*"

The first word in this definition of law is *ordinance* and is a scriptural term. "Those things that are, are *ordained* of God." Rom. xiii, 1, 2. "Why then was the law? It was set because of transgressions, till the seed come, to whom he made the promise, being *ordained* by angels in the hand of a mediator." Gal. iii, 19. "I (Wisdom) was *ordained* from eternity, and of old, before the earth was made." Prov. viii, 23. We read in the preamble to our Constitution: "We, the People of the United States . . . do *ordain* and establish this Constitution for the United States of America." St. Augustine's celebrated definition of the eternal law is "the Divine Reason or the Will of God commanding the *natural order* to be conserved, forbidding it to be disturbed." Against Faustus, chapter 27. In the above-cited place, Mr. Lawrence makes the following judicious criticism of Austin's definition: "It is clear that the idea of *orderly* and methodical procedure towards a given *end* is also part of the usual notion of law. When human conduct is controlled by *no principles*, when we discover no consistent rule of action, when restraining power is absent and all is *irregular* and *chaotic*, we at once describe such a life as *lawless*."

Were we too hard when we said that Austin and his followers, blind leader and blind led, fall into the pit of lawlessness? We heartily concur with Mr. Lawrence as to the substance of his paragraph. Law and order must go linked together. Order is heaven's first law and *earth's* too. Law commands or prohibits or permits or punishes actions and *chooses* these *means* for the *end* of the general welfare, and thus *ordains* and establishes order, civil, ecclesiastical, etc. Peace, according to St. Augustine, is *security of order*. This is true peace also, according to President Wilson.

The second term in the definition is, *of reason*. It implies, according to St. Thomas (1. 2. q. 91. a. 1. c.,) "a practical dictate of *reason* in the sovereign who governs a perfect community." "That the will of the sovereign commanding may have the essence of a law, this will must be regulated by *reason*. In this sense is to be understood the saying, 'the will of the sovereign has the force of law.' If that will of the sovereign is not regulated by *reason*, it is *iniquity* and *not law*." (1. 2. q. 90. a. 1. ad. 3).

Our United States Supreme Court repeatedly has decided acts or interpretations of acts of State

Legislatures or of the Congress, to be null and not law, because *unreasonable.*

The next clause is, "for the common good." There is a similar clause in our Constitution called "the general welfare" clause and also in the preamble. Thus if the law is not for the common good or general welfare, either immediately or mediately, it is no law. In Bentham's discovery that all law is for the greater good of the greater number, what is true is not new.

The next clause is: "by him who has the care of the community." Its reason is that "a law properly and principally regards the *order* to the *common good.* But to *ordain* a thing to the *common good* is the prerogative either of the *whole multitude* or of some one *holding the place of the whole multitude.* And thus to enact a law either pertains to the whole multitude or pertains to a public personage who has the care of the whole multitude, because, also in all other things, to ordain to an end is the function of him to whom that end is proper."

"*Whenever civil power is found in one man or prince, it has emanated by a legitimate and ordinary right from the people or community either proximately*

or remotely. Else it cannot be held to be just." Suarez, De Legibus, book 3, chapter 4. How identical are these maxims of Suarez and St. Thomas with those of our Declaration of Independence: "that among these rights, are life, liberty, and the pursuit of happiness; that to secure these rights governments have been instituted among men, *deriving their just powers from the consent of the governed.*"

The last vord in the Latin text of the definition is *promulgata, promulgated.* "That a law may obtain the force of *obligating, which force is special to law,* it must be applied to the men who should be regulated according to it. Such application is made by its being brought to their knowledge from the promulgation itself." 1. 2. q. 90 a. 4.

If Austin and the above cited orator had said that the *immediate and adequate effect* of a law is obligating in conscience or *morally binding force,* they would have on their side Suarez who teaches and proves this in express terms in De Legibus, book 1, chapter 14. St. Thomas is understood to have indicated this effect in his definition, in the words *ordinance* and *promulgated.*

It is noteworthy that there *is not one word in*

this definition about sanction, about rewards or punishments from the lawmaker or sovereign. According to Suarez, punishments inflicted or commanded by a law in order to sanction it, are not an element of the formal concept or idea of a law. That they be *deserved* at least from God, is a necessary effect of the law obligating and making its own violation a *sin*.—That they be threatened or inflicted is an *accessory* effect of law, yet not an immediate but a mediate effect, in the normal order of which alone we are here speaking. Let us analyze this normal order. The law-making power representing a multitude, or people, or nation, or state, for law-making, makes a stable rule of conduct for its citizens or its functionaries. It commands, or it prohibits, or it positively permits and approves an action as lawful; or it negatively permits, or tolerates, an action by refusing or even forbidding to punish it. This law may not bind and may not intend to bind the conscience to do or not to do those specific actions, but it always binds at least not to resist its own ordinance of reason. "Let every soul be subject to higher powers; for there is no power but from God; and those things that are, are ordained of God. There-

fore he that resisteth the power, resisteth the ordinance of God." As the catechism teaches, the Creator and Sovereign Lord has commanded to honour, reverence, and obey not only our Father and Mother and Pastor and Bishop and Pope but also our legitimate civil authority. And this latter is natural law which insists that we are bound in conscience at least not to resist any civil ordinance of reason. The law-maker does not merely pray, or beg us to do or not to do a thing, in the attitude of a suppliant inferior. He does not merely counsel, in the attitude of a superior in intelligence. But he impels or moves intelligent beings who can know good and evil, right and wrong, by making things which are in themselves morally indifferent, morally good, or morally evil; by making these things good because commanded, or evil because prohibited; that is, by obligating or binding consciences. Let us suppose that besides forbidding an action, the law has instituted a penalty and has constituted a judge to try and to sentence, and a President, Governor, Sheriff, Executioner, to carry out the sentence. Each of these functionaries is morally bound by the law to perform the duties of his own office, even apart

from his morally binding contract implied in his acceptance of his office. As President Cleveland said, a public office is a public trust. From this obligating force as the immediate and adequate effect of law, normally follow mediate and accessory effects like the punishments of law-breakers. Thus from the concept of law Suarez proves, or rather explains, that sanction is not an essential element of law in itself and that it is *not even an immediate and adequate effect* of law as a cause, but that it is *only an accessory effect.*

We cite as examples of human laws which are true laws and have no human sanction, the ecclesiastical laws to hear Mass on Sunday and not to eat meat on Friday. Hence we argue thus: human laws without human sanction *exist:* therefore they are *possible*, according to the axiom, "*ab esse ad posse valet illatio*," "from existence to the possibility of existence, there is a valid inference." Catholics recognize a real law-making authority in the Pope and in their Bishop. Most of the non-catholic Christian denominations repudiate the idea of authority in their ministers to make territorial laws or even personal precepts which bind the conscience of their members. But we think

that those two examples and many others like them, such as the law for subdeacons, deacons, priests, bishops, etc., to say the Breviary every day, and thus give an hour or more of their time to special prayers every day, would appeal to the minds also of non-catholics, and convince them that such human laws as these without human sanction are *possible*. What numbers of the ordinary faithful and of the clergy respectively hear Mass on Sundays, abstain on Fridays, and say the whole divine office every day, who would not perform these religious practices if they did not feel themselves obliged by law under pain of grievous sin to perform them! How potent, without human sanction, through moral obligation, and the sense of duty, a human law may be to move the masses of normal intelligent beings to do or not to do particular things! Do not the vast majority of our soldiers habitually obey their officers from their President to their corporal, without thinking of punishments menaced for disobedience, and while thinking only of their duty created by the orders of their officers? Do not the vast majority of American citizens, republicans, democrats, independents, willingly fulfil their civic obligations

created by laws made for the general welfare by those who represent them, in whose election they have had a voice?

The truth of this view is confirmed by the authority of recent writers on the philosophy of law. Let us hear Sir Henry S. Maine in his International Law, page 50: "Here we cannot but remark that a serious *mistake as to human nature* is becoming common in our day. Austin resolved law into the command of a sovereign addressed to a subject, and always enforced by a *sanction or penalty which created an imperative duty.*" We cannot understand how a sanction or penalty of itself *can* create right. We do understand how law as defined by St. Thomas creates imperative duty. Sir Henry continues: "The most important ingredient brought out by this analysis is sanction. Austin has shown, though not without some," we say absurd, "straining of language that the sanction is found everywhere in positive law, civil and criminal." We have shown that sanction is not found everywhere in positive law, at least ecclesiastical. "This is in fact the great feat which he performed, but some of his disciples seem to me to draw the inference from his language that men *always* obey

rules from fear of punishment. As a matter of fact this is quite untrue, for the largest number of rules which men obey are obeyed unconsciously from a mere habit of mind. Men do sometimes obey rules from fear of punishment which will be inflicted if they are violated, but, compared to the mass of men in each community, this class is but small—probably it is substantially confined to what are called the criminal classes—and for one man who refrains from stealing or murdering because he fears the penalty, there must be hundreds or thousands who refrain without a thought on the subject."

St. Thomas has on this point a passage (1. 2. q. 96. a. 5) which seems to us to hit the nail upon the head. "All the subjects of a given authority are also subject to the law of that authority. However not all, but only the bad are subjected to laws by any fear of punishment." "Law has two things in its nature; the *first* is that it is a rule of human actions, and the *second* is that it has coercive force. Thus a man can be subjected to law in two ways. In one way he can be subjected as one *regulated* is subject to the rule. And in this way all who are the subjects of a given authority are subject to

the law made by that authority. . . . Someone may be said to be subject to a law in another way, namely as *a thing coerced* to one coercing. And in this way not virtuous and just men but only the bad are subject to the law. For what is coerced and violent is contrary to the will. The will of the good is in concord with the law from which the will of the bad is in discord." St. Thomas here speaks of fear which is servilely servile, which says, I would kill, steal, etc., if there were no punishment threatened and which is essentially sinful. We read in a footnote here added by the editor of the Summa "In the twelfth century the Beghards and the Beguines dogmatized that those who are *perfect* are not subject to *human* obedience and are not obligated by any precepts of the Church. Luther and his followers resurrected this error which was condemned in the Council of Vienne and also in the Council of Trent." The latter Council says in Session 6, canon 20: "If any one shall say that a man who has been justified and who is howsoever perfect, is not bound to the observance of the Commandments of God and of the Church, but only to belief, as if forsooth the Gospel were a bare and absolute promise of eternal

life without the condition of the observance of the Commandments, let him be anathema." Canon 21: "If any one shall say that Christ Jesus was given to God by men as a Redeemer to confide in, and not also as a Legislator to obey, let him be anathema."

The English philosopher Hobbes taught that the state of *nature* is the state of war of all against all, and that *naturally* every man is the enemy of every man, that no one obeys any one, no one commands any one.

Rousseau taught that man's *natural* state was that of an animal of the forest living and eating and sleeping under an oak like a pig, and happy and content in this simple life.

Horace protested that he was not addicted to swearing to the words of any master, yet he thus swore by Epicurus "one from the herd of pigs" in Book 1, Satire 3: "Sense and morality are against them, and utility itself, the mother almost of right and equity. When men as rude animals crawled forth upon the first-formed earth, the dumb and dirty herd fought with their nails and fists for their acorns and caves, afterwards with clubs, and finally with arms which experience had forged: till they

found out words and names by which they ascertained their language and sensations. Thenceforward they began to abstain from war, to fortify towns and establish laws: that no person should be a thief, a robber, or an adulterer. For before Helen's time many a woman was a most foul cause of war. But those fell by unknown deaths, whom pursuing promiscuous lust, the stronger slew as the bull in the herd."

We read in Horace's epistle on the poetic art: "If as a poet you have to depict the renowned Achilles, let him be indefatigable, wrathful, inexorable, courageous; let him *deny* that laws were made for *him;* let him arrogate *everything* to force of arms."

Austin's idea of the lawmaker as a Superman or a bull in the herd and his idea of subjects to be ruled by fear, as savage criminals or slaves or brutes, and his idea of the origin of the natural law are not new. He and Bentham, his utilitarian precursor, and their followers, admirers, and apologists, rather amusingly claim the monopoly of *modern* jurisprudence and scorn their adversaries as not being *modern* jurists. On this point we heard Mr. Lawrence; and Sir Henry S. Maine says on page 22:

"The very conception from which Grotius started, the conception of a real and determinable Law of Nature, has not resisted the application of *modern* criticism. To each successive inquirer, the actual childhood of the human race looks less like the picture which the jurists of the seventeenth century formed of it." Much of this *modern* criticism is seen from the citations just made to keep close company with some quite *antique* criticism which is not entirely savory.

However, in order to repudiate Austin's definition as fanciful and to vindicate that of St. Thomas as right, we do not need to show that Moses and St. Paul are inspired, and that Christ is God, and that Christianity is divine; and we do not need to prove that there may be reasons for doubting the reliability of Darwin or Haeckel or Rousseau or Hobbes or Horace or Epicurus or other *moderns* as historians of the childhood of the human race. All we need to stick fast to, is our stand on the high ground that man as he has been universally constantly, and perpetually regarded by the human race and as we see him with our eyes and know him, *is* a social rational animal who, unless insane, knows the difference between moral right and

wrong; and that laws or rules of human actions made by him who has the care of the community must appeal to man primarily as a reasonable being with a conscience. For this we must only keep out of the agnostic school that denies or doubts that there is true morality, a true natural law, and that places over its gates the words: *Ye who enter here leave all common sense and all hope behind.*

According to Luther we can know that there is a God and that there is morality from revelation but *not* from reason.

According to Frederic the Great and his bosom friend Voltaire, all revelation and faith in it are degrading superstition and to be crushed by all means fair or foul (*écrasons l' infâme*); but we can easily know God's existence and His natural law, at least according to Voltaire.

According to Kant we can know only phenomena, appearances, and can know nothing as it *is*, thus no *truth*. He was the foe of dogma, *known truth*. But he illogically turned around and told us that by our practical reason we can know morality, natural law, and he gave us his *autochthonous autonomous* dictate of practical reason as his authority.

According to Spencer and the other agnostics, at the bottom of everything we think we *know*, there is something that cannot be proved and cannot be analyzed and thus *everything is unknowable.*

According to John Stuart Mill, for all we of this earth know, two and two may make five on the planet of Mars.

Even that truly marvellous scientist, the late cousin of President Poincaré, said, all our knowledge is *relative,* in the above sense of Mill.

This is also a *dogma* of the Pragmatists and is implied by the school of Ethical Culture which professes to teach morality without any theological or philosophical *dogma,* which is defined in the Century Dictionary as *known truth.*

The Marxian Socialists, with their materialistic interpretation of history, scorn God and heaven and hell and all morality supernatural or natural.

Are those foes of Christianity, or of the powers of right reason, without all blame for the Socialist horrors of the Paris Commune or the Russian Bolsheviki?

We cannot rehearse too often the following lessons: "Vain are all men in whom there is not the knowledge of God, and who by these good things

that are seen, could not understand Him that is, neither by attending to the works have acknowledged who was the workman. . . . For the First Author of beauty made all those things—and He that made them is mightier than they. For by the greatness of the beauty and the creature, the Creator of them may be seen so as to be *known* thereby." Wisdom xiii, 1 sq.

"The invisible things of Him, from the creation of the world, are clearly seen, being understood by the things that are made. His eternal power also and divinity. So that they are inexcusable. Because, when they had known God, they have not glorified Him as God nor given thanks, but became vain in their thoughts and their foolish heart was darkened. For professing themselves to be wise, they became fools.

"For when the Gentiles who have not the (written) law, do by nature those things that are of the law, these having not the law are a law to themselves. They show the work of the law written in their hearts, their conscience bearing witness to them, and their thoughts within themselves accusing them or else defending them." Romans i and ii.

"The fool hath said in his heart, there is no God. They are corrupt and are become abominable in their ways." Psalms xiii, 1.

In the preface to Jefferson's Bible there is praise of the Gospel morality "as higher and truer than all the creeds the world had known before" as our Longfellow afterwards sang of the Christian religion.

So far we have dwelt on two points; there is a law of nature, and by it states as well as individuals are morally bound to keep their contracts or agreements to do or not to do a particular thing; human sanction is only an accessory effect of a human law which can be conceived and exist without human sanction.

To see that positive international law *has human authority* and is thus law in the proper sense, let us now look into its definition. Let us first hear Suarez in Book 2, Chapter 19: "The precepts of the law of nations differ from the precepts of civil law in this, that the precepts of the law of nations are known not from writing but from the usages, not of one or two states or provinces, but of all or nearly all nations. If an unwritten law has been introduced by the usages of one nation, it obliges

that nation alone and is also called civil law. But if it has been introduced by the usages of nearly all nations and obliges all nations, we believe this is a law of nations in the proper sense. It differs from natural law because it rests not on nature but usages; and it is distinguished from civil law by its origin, foundation, and universality, in the sense above explained. This seems to me to be the idea of Justinian when he says: 'the law of nations is common to the human race; for, usage and human necessities thus exacting, human nations have enacted certain laws for themselves.' Here I note the words: *usage*, *exacting* and *enacted*. For in this latter word it is signified that the law was enacted not by nature but by men; and in the former word it is declared that the law was introduced not by writing but by usage. The same seems to have been the idea of Isidore. For in the fifth book of his Etymologies he distinguishes the said three kinds of law (natural, civil and international), and defines that natural law is 'that which is common among all nations because everywhere it is held from the *instinct of nature* and *not* from any enactment.' In this passage he approves our assertion and virtually teaches that

the law of nations is not founded only on the instinct of nature. Further on, in chapter 5, after giving examples of the law of nations he concludes: 'the law of nations is so called because *nearly* all nations *use* this law.' Here he insinuates the definition of a law of nations, namely, that it is a law common among all nations, not from an instinct of nature alone, but enacted by usage among them. The particle *nearly* is not to be passed over lightly. For by this particle it is indicated that in this law there is not a moral necessity which is altogether natural and inherent, and that it is not required that the law be common to *absolutely* all nations (even apart from ignorance and error) but that it is sufficient that *nearly* all well constituted nations use it. I think this was the idea of St. Thomas as I shall later explain. The other above cited authors without doubt meant the same.

This can be illustrated by examples.

Absolutely considered, the custom of receiving ambassadors under the law of immunity and security is not obligatory from natural law. Each community of men could have rightfully not received in its own home the ambassadors of another,

and could rightfully have willed not to admit them. But now, to admit them is necessary by the law of nations and to repudiate them is a sign of hostility and would be a violation of the law of nations, even granting that it would not be an injustice repugnant to reasonable nature. Therefore, although supposing the admission of ambassadors under an implied compact, then not to safeguard their immunity is against natural law because it is against justice and due fidelity; yet that *supposition* and *that compact*, under that *condition*, have been introduced by the law of nations. The same can be considered in every contract and in all commerce. Three things are to be distinguished. One is the particular way of contracting. This ordinarily pertains to the civil law and it can often be determined by the free choice of the contracting parties, if no law opposes it. The second is the observance of the contract, after it has been consummated, and this pertains to natural law, as is evident. The third is *liberty* to contract and trade with men who are not private or public enemies, and this liberty is from the law of nations; for natural law *per se* does not oblige to it, and one republic could rightfully have lived by itself and

have been unwilling to have commerce with another even though there were no enmity. By the law of nations there has been introduced the *usage* that commerce shall be free and that the law of nations is violated, if without reasonable cause it is prohibited. I think that is to be thus understood what is said in the above cited paragraph (*jus autem*): "from this law of nations, have been introduced nearly all contracts, purchases, sales," etc.

"To explain the preceding idea I add (as I gather from Isidore and other laws and writers) that a thing is said to be derived from the law of nations in two ways; in one way because *all* peoples and the various nations have the duty to observe it in their dealings with each other; in the second way because it is the law which special states or realms observe towards each other. The latter is called a law of nations by similitude or analogy with the former. The first way seems to me to express the idea of a law of nations in the most proper sense as of a law really distinct from a civil law as we have explained it. And to this pertain the examples regarding usages referring to ambassadors and commerce. *I think the same about the right to*

make war in as much as it is founded on the authority which one supreme republic or monarchy has to punish or vindicate or repair an injustice which has been inflicted on it by another supreme republic or monarchy. *This authority* seems to me to be derived *from the law of nations.* For in virtue of reason alone it was not necessary that this authority should inhere in the offended republic. Because men could have rightfully established another mode of vindication. *They could have rightfully committed this authority to some third Sovereign who would be an arbiter armed with coercive power.* However, because the method which is now observed is more easy and more congruous with nature, it has been introduced by usage and thus it is just, so that it cannot be lawfully resisted. Likewise, treaties of peace and truces can be classed under this head, not as to their observance after they have been made, for this pertains to natural law, but as to admitting and not refusing them when they are sought reasonably and in the right way. This method is indeed very congruous to natural reason. But by usage itself and the law of nations it seems to be more strengthened and to be under a greater obligation. . . .

"Better with Soto and others we understand St. Thomas's way of speaking as follows. *Precepts of the law of nations are called conclusions from the law of nature not absolutely and by a necessary inference but by the comparison made with the determinations of the civil and local law.* For in a civil or local law either on the one hand there is made a determination which is merely arbitrary, about which it has been said 'what has pleased the Sovereign has the force of law' not because his mere will is enough for a reason, but because a determination made in divers other ways might have been reasonable, and because often there is no reason for making the determination in this particular way rather than in another way. It is in this sense that local law is said to be made by the will *rather* than by the reason. Or on the other hand where there does come in some special reason for such determination, it considers an order based on circumstances which are special and as it were materialistic and thus the determination is based rather on circumstance than on substance. Whereas in the law of nations, the precepts are more general because they consider the utility of the whole of human nature and conformity to the

primary and universal principles of nature. It is in this sense that laws of nations are called conclusions from this principle, namely, because by the power of natural reasoning or inference there immediately appears that fitness or moral utility of such precepts which had induced men to introduce such usages, *necessity* more than *will* so *exacting*, as the Emperor Justinian said."

Here is a key unlocking the mind not only of St. Thomas, St. Isidore, Justinian, and others of the older sages but also of Grotius. If Sir Henry Maine and Mr. T. J. Lawrence and their precursors and their followers had known of this key and used it, their minds would not have been so confused and they would not have confused the minds of so many recent jurists and statesmen on the ideas of natural and international law and their morally binding force.

Let us further interrupt Suarez by citing a passage from St. Thomas (1. 2. q. 97. a. 3) answering the question whether usage or custom can obtain the force of law. "Conclusion.—Whereas each one appears to elect as good what he fulfils by his work, it is certain that not only through words but also through works or acts, especially when mul-

tiplied (which make a custom) law is caused, so that custom is rightly said to have the force of law. I reply that we must say as follows: Every law arises from the reason and the will of a lawmaker: the (positive) divine and the natural law from the reasonable will of God: human law from man's will regulated by reason. But as the reason and will of man in things to be done are manifested by word, they are manifested also by deed. For each one seems to elect as good what he fulfils by work. As is manifest, by human word law can be changed and also explained, inasmuch as that word manifests the interior movement and concept of human reason. Whence also likewise by acts, especially when multiplied (which constitute custom), law can be changed and explained and there can even be caused something which has the force of law, inasmuch as namely by multiplied exterior acts the interior movement of the will and the concepts of reason are most efficiently declared. For when a thing is done very often, it appears to come from the *deliberate* judgment of reason. And according to this, custom has the force of law and abolishes law and is a mistress interpreting law. If there is a *free* multitude or people which *can*

make a law for itself, *the consent of the whole multitude to observe a thing has greater force than the authority of the Sovereign, who has authority to make a law only in so far as he represents the personality of the multitude.* Whence although single individuals cannot make a law, yet *the whole people can make a law.* But if the multitude has *not* the free power to make a law for itself or to remove a law set by a superior power, yet a custom prevailing in such a multitude obtains the force of law in so far as it is tolerated by those to whom it pertains to impose a law on the multitude; for from this they are seen to approve what the custom introduced." According to the mind of St. Thomas elsewhere expressed, for a custom to abrogate a law it ought to be more useful for the common good than the law itself, in view of circumstances of places, times, and persons. Moreover, the multitude must consider its custom a law, a rule of action which binds or obligates. Thus the early Christians introduced the law of hearing Mass on Sunday and not eating meat on Friday by their multiplied acts and soon considered it a sin to violate these customs. All pious Christians said morning and evening prayers and grace at

meals, but at least those who have been well informed have never considered these latter customs as binding laws or their single violations as sins.

After the interruptions let us hear Suarez completing his idea of positive international law. We cited above the following words: "The true nature and functions of international law have never been better described than in the following passage, in which they were for the first time adequately set forth in the early years of the seventeenth century." This praise is given by Thomas Erskine Holland, Chichele Professor of International Law and Diplomacy and Fellow of All Souls' College, Oxford, who has honorary titles also from Bologna, Glasgow, Dublin, Perugia, St. Petersburg, and Berlin. Our own translation of this celebrated passage is as literal as we have been able to make it.

"The reason for this part and this law is as follows: The human race no matter how greatly it has been divided into various peoples and realms, still has a unity, which is not only specific but also *quasi political* and *moral*. This is indicated by the natural precept of mutual benevolence and mercy which extends to all individuals and even to all

who are aliens and to all of whatsoever nation. Indeed each perfect state, whether a republic or a kingdom, is a community which is perfect in itself and is one consisting of its own members. Nevertheless each one of these communities is also in a manner a member of this universal community in as far as it concerns the human race. For never are those communities singly so self-sufficient as not to need mutual aid and association and commerce, sometimes for their better being and greater utility, and sometimes also on account of their moral necessity and indigence, as is evident from experience itself. Therefore on account of this reason they are in need of some *law* by which they may be directed and rightly ordered in this kind of communication and society.

"And although this is effected in great part by natural reason, yet it is not thus effected efficiently and immediately as to all things. And thus some special laws have been able to be introduced by the usage of those same nations. For as in one state or province custom introduces law, so laws of nations have been able to be introduced by customs in the universal human race, especially as the things which pertain to this law of nations are few

and very near to natural law and are most easily derived from it and are so useful and are so congruous to nature itself that although the deduction is not evident, as of itself *altogether* necessary for the honesty of morals, yet it is very fitting to nature and of itself is acceptable to all."

We cannot be too earnest in begging an attentive perusal of that celebrated passage which goes to the bottom of the questions whether, how, and why international law is true law and as such is morally binding or obligating.

All sane philosophers hold that a large multitude of men, made by God social rational animals, cannot live close together for a long time on this earth made by God as it is, without *positive* laws. They thus see in man's nature and the nature of his earthly home, both made by God, the ordinance of reason for the common good made and promulgated by Him who has the supreme care of that community or multitude living close together for a long time—they see the divine ordinance that that multitude make and have some positive laws. Many sane philosophers hold this maxim of St. Paul and of common sense to be as easily knowable as the inference: God commands man not to kill himself,

therefore he commands him to eat. They hold that for society's life, liberty, and happiness positive laws and authority to make them are a need which is as manifest as man's need of eating to live and grow and be healthy and wealthy and wise.

These sane philosophers of course agree with us that the Creator of the social rational animal and of all fire, water, earth, and air such as they are, is likewise "the Most High who divided the nations and separated the sons of Adam," and is the First Author of every natural human society and of its needs. And they agree that each state is such a natural society. Why they do not, with the Doctor who excels, *in the nature and needs of nations which are naturally social*, also see the need of international positive laws, we cannot comprehend.

Even Mr. Lawrence, on page 3 says: "Just as men could not live together in a society without laws and customs to regulate their actions, so states could not have mutual intercourse without rules to regulate their conduct." However, *there*, he says *laws and customs*, and *here*, *rules*. We ask, if there is the same necessity in the first and in the second case, why are laws required in the first and not also in the second? But because the multitude

of individuals in one state have agreed to introduce a law, by a custom, does the agreement or its necessity preclude the custom from obtaining the force of law in that state? No. Why then in the community of states?

On pages 44 and 45 of *Questions about Justice*, by A. Vermeersch, Professor in the Jesuit College of Louvain, we read: "Should we grant that there exists an international society of nations which does not depend on mere agreement but which draws its origin from nature itself? If there is such a society, there will also be a general welfare whose exigencies must be satisfied. Thence there will be a duty of legal justice towards it. Suarez already in his own times argued from the necessity of mutual aid and communication, that among civil societies there exists such a society through which they attain that which is lacking for the perfect sufficiency of those civil societies singly. In our times since commercial transactions between nations have increased and a greater identity of usages and culture has been introduced, how much more reason does there seem to be to assent that there is this union. Nature, when making mutual necessities, at the same time im-

pels to make a society and efficiently sanctions its institution. Indeed you can scarcely otherwise explain certain most specific points of international law which are to be observed even in war and about which there has been no formal agreement. For instance that the high sea is under the exclusive jurisdiction of no nation, but that each nation possesses the parts of the sea which are within three miles of its shores.

Nor is there any cause from this doctrine to fear for the liberty or autonomy of countries, as Rev. Father Schiffini objects, since that society and the jurisdiction which it possesses from its being *such* a society, is *limited* by the ends for which it exists. Is not civil society strictly bound to respect the rights of domestic society? As is manifest, that society is perfectly democratic in form. The whole multitude of nations is alone competent to make a law for it. The members immediately composing it are perfect or independent societies. With regard to its object or the matters with which it deals, it is incomplete, and is closer or looser in proportion to the greater or smaller number of things to be supplied by it for the common welfare. Hence it is not repugnant that there should exist

several societies of this kind and that there be a closer union between neighbouring nations, whereas the more universal union embraces all the civilized nations. Taparelli treats this matter at length. The doctrine of Suarez is approved by Rev. A. Van Gestel, S. J. on Justice and the Civil Law, n. 42. The doctrine defended by R. D. Pottier on Right and Justice, Diss. 3, s. 1. n. 39–42. is not dissimilar. Some corroboration is gathered from the 72d condemned proposition of the Syllabus: "The principle which they call non-intervention is to be proclaimed and observed." This principle would condemn as morally wrong any war for humanity, like our war for the relief of the Cubans.

Who was Aloysius Taparelli d'Azeglio? He was born in Turin in 1793 and died at Rome in 1862. His father was an ambassador of Victor Emanuel I to the Holy See and his brother Massimo was an Italian minister of State. He himself was a rector of the Roman College and a professor there and at Palermo and an editor on the staff of the *Civilità Cattolica*, and the author of many articles and books on ethics and government. His chief work, *A Theoretical Essay on Natural Right Based on Facts*, covering 1165 pages in large octavo, is re-

garded by many as the beginning of the modern science of sociology. In paragraph 1364 sq. we read: "The first physiological law of a social entity may be formulated thus: authority is the constitutive principle of every society. Thence the international and ethnarchic society must possess an authority, must be governed, directed in everything necessary for its existence and perfectioning, to the end which it proposes to itself. How could there exist a law of nations, that is, a body of laws *obliging* all nations, if there were not a true authority which could establish these laws? All authors admit positive laws which compose the law of nations. But I know not if all likewise have seen the logical nexus which links these two propositions: there exists a law of nations, therefore there exists an international authority. Several have confounded this authority with the natural authority of the Creator, the Supreme Head of each nation and of the universal society of men. Others deny the existence of a special international authority, and say that nations obey international law because they will to do so without being obliged to obey. Others consider this obligation as the resultant from a free contract which

obliges only those who have willed to oblige themselves. We could admit this last opinion in the case of peoples who are still *infants* and who are thence free, at least in a certain measure, since they have none of the international, natural, and stable relations which have their origin in natural facts. These infant peoples have almost no common dealings or interests forming a tie with the other nations. But as they develop, they form such relations and we soon see appear that common order which creates the positive rules of international law; but then we must suppose that there already existed an international authority. But in whom will this authority reside? To solve this question, let us recall the following principles which are the foundation of all international right: the nations are independent societies; thence their association is altogether voluntary: by right, here the authority ought to reside *in the common accord of the associated nations:* and it is for those associates to establish the *forms* according to which this authority must be exercised. We see the European nations feeling more and more the need of an international authority, *regular* and *perfectly* determined in its *forms;* the need of an international

authority which is strong and respected by all, and can cause that the right of the weak shall not be at the mercy of the mightier. This is the interest of the great number. Now when self-interest and right are combined they become all-powerful and infallibly determine the forms which are most in harmony with the needs of societies. Thus we believe that by little and little we shall see arise a universal federal tribunal which will replace alliances, congresses, and treaties as these to-day provisionally replace the supreme power of the Emperors and the patriarchal government of the Pontiffs. As it seems to us, this must come infallibly, although perhaps slowly, for the life of nations is counted by centuries as the life of individuals by years.

Let us leave to time, politics, events, those more or less blind tools of Providence, let us leave it to those divers elements to develop little by little the political *forms* of the international society and thus to realize the happiness of nations in the same way as the civil forms of political society must tend and arrive insensibly at procuring the happiness of families and individuals.

From all that has been said we can now draw the

following conclusions: peoples form with one another a society of equals: consequently the authority which ought to direct them is found *in their common accord or at least in the common accord of the majority of the associated nations;* in their common interests they cannot reject this authority at least without breaking at the same time the social relations which join them together: this authority ought to have the power and the force to maintain order in the international association: finally here also we see a particular application of the great principle, *right tends to fix itself there where it finds might.*"

From the preceding citations we see the nature and functions of international law as first described by Suarez, then developed by Taparelli and endorsed by Vermeersch. In general, the Jesuits regard Suarez as their most distinguished theologian and philosopher. They have great regard for Taparelli whose essay on Natural Right Based on Facts (of 1165 large octavo pages) and whose other writings on government long exerted great influence in the conservative circles of thought in Europe and elsewhere. We know of no living Jesuit writer who has been honoured in his own

country as Father Vermeersch of Louvain has been honoured by his fellow-statesmen and fellow-clergymen in the land of King Albert and Cardinal Mercier. Have all the Jesuit writers on this matter agreed with these three? No. What Suarez, Taparelli, and Vermeersch affirm, Schmalzgrueher, Costa-Rosetti, Tongiorgi, Schiffini, Zollinger, and others deny.

Before becoming a Jesuit and a priest Father Vermeersch was a lawyer. As the reader has noted, this former lawyer selected the actual law of the marine league as a fact which can scarcely be explained except by admitting that the society of nations has true authority by which what *was* high sea and common property and territory, *is* the exclusive property and territory of particular nations. He seems to us to have been familiar with a recent celebrated case and to have here openly alluded to it. We refer to the case of the Queen *v.* Keyn, popularly called the *Franconia* case. On it let us hear Sir Henry S. Maine, p. 39 sq.

"The *Franconia*, a German ship, was commanded by a German subject, Keyn. On a voyage from Hamburg to the West Indies, when two and a

half miles from the beach at Dover, and less than two miles from the head of the Admiralty pier, the *Franconia*, through the negligence, as the jury found, of Keyn, ran into the British ship *Strathclyde*, sank her, and caused the death of one of her passengers. Keyn was tried for manslaughter and was convicted at the Central Criminal Court, but the question then arose whether he had committed an offence within the jurisdiction of English tribunals." This point was granted to depend on the question whether the waters within three miles of the English shore were English property and territory, and, as these waters in more ancient times had been high sea and so recognized, the question was asked how they had been converted from high sea, over which no nation had exclusive jurisdiction, into property and territory owned exclusively by England and under her exclusive jurisdiction. Writers on recent international law had agreed that the law of the marine league *is* international law. The Supreme Court of Queen's Bench was almost evenly divided. Lord Justice Coleridge gave the opinion of the minority and Lord Chief Justice Cockburne that of the majority. Sir Henry S. Maine says that the American view is

that held everywhere outside of the British Empire. He thus sums up: "It would appear from the authorities which I have cited that there prevail two, and possibly three, opinions as to the obligatory force of International Law on individual states. The lawyers and *statesmen* of the United States of America regard the acknowledgment of and submission to the international system as duties which devolve on every independent sovereignty *through the fact of its being admitted into the circle of civilized Governments*. Among the English judges, Lord Coleridge considers that the *assent* of a nation is necessary to subject it to International Law, but that, in the case of Great Britain and all other civilized European Powers, this assent *has been given* either by express action or declaration, or at all events by non-dissent. Lastly, Lord Chief Justice Cockburne, while accepting the view that International Law became binding on states by their assent to it, manifestly thought that this assent must somehow be conveyed by the acquiescing state in its sovereign character, through some public action which its Constitution recognizes as legally qualified to adopt a new law or a new legal doctrine; that is,

in Great Britain by Act of Parliament or by the formal declaration of a Court of Justice." We read on page 38: "In one celebrated case (Queen *v.* Keyn), only the other day, the English judges, though by a majority of one only, founded their decision on a very different principle, and a special act of Parliament was required to *re-establish* the authority of international law on the footing on which the rest of the world has placed it." The reader is begged to note the term *re*-establish. Does not even Sir Henry Maine by that prefix bear witness to the fact that *before* that one and only one British disestablishment of the authority of international law from the footing on which the rest of the world had placed it, that authority had been established in the British Empire? The following act of Parliament was passed within two years of that "discredited and universally criticized judgment" of the Court of Queen's Bench: "the territorial waters of her Majesty's dominions in reference to the sea, means such part of the sea adjacent to the coast of the United Kingdom or to the coast of some other part of her Majesty's dominions as is deemed by international law to be within the territorial sovereignty of her Majesty."

That judgment is thus seen to be one exception proving the rule before and after it of the British *government*, and proving the rule of *public action* or *law*. Lord Mansfield had already said that a parliamentary statute could not alter an international law and didn't intend to alter it. Blackstone had said that Great Britain had accepted international law "without which it must cease to be a part of the civilized world."

These last authorities are taken from an article of thirty-six pages in the November, 1907, number of *The American Journal of International Law*. The author is its editor, Mr. James Brown Scott. The title is, "The Legal Nature of International Law." This article has been many times reperused by us. In it we have not found one principle which would not have been endorsed by Grotius, Suarez, Taparelli, or Vermeersch. We would like to see that article brought out in pamphlet or booklet form for readers to whom the *International Law Journal* is not accessible. We venture to take the extreme liberty to reduce its fundamental points to the form of a catechism, the questions being ours and the answers those of Mr. Scott.

What is international law? It is the body of usages and customs, binding modern civilized nations in their common intercourse.

Is international law necessary? Yes. Says Sir Robert Wiseman: "When everything else has a law to guide it, inasmuch as no one society, or petty commonwealth can stand without some law, the like necessity must there needs be of some law to maintain and order the communion of nations corresponding and acting together. Of such power and pre-eminence is the law of nations that no particular nation can lawfully prejudice the same by any of their several laws and ordinances, more than a man by his private resolutions can prejudice the law of the whole commonwealth or state wherein he liveth."

Is international law a rule which binds each nation? If a dice player throws double sixes every time, we say the only cause is that the dice are loaded. Every civilized nation has recognized international law as a rule which binds. We should in common sense say that this effect can have no cause but the evidence of the truth that international law *is* law and binds as such.

What is the status of international law in the

United States? The nation was born into the family of nations and promptly professed obedience to the law of nations "according to the general usages of Europe" (Ordinance of 1781, *Journals of Congress* 7, 185, 1 Kent's *Commentaries*, 1). Our Constitution recognizes international law as binding on us. In article 1, section 8, Congress is empowered "to define and punish piracies and felonies committed on the high seas, and offences *against the law of nations*." The law of nations is thus contemplated as an existing system and part of our municipal laws. Marshall, the great Chief Justice, said, in the case of the Nereide in 1815: "The court is bound by the law of nations, which is a part of the law of the land." Congress has never passed one statute contradicting a law of nations.

The late illustrious Mr. Justice Gray, in the year 1899, said in the case of the Paquete Habana: "International law is part of our law." Secretary Thomas Jefferson in a letter to "Citizen" Genet said: "The law of nations makes an integral part of the laws of the land." Alexander Hamilton in the *Letters of Camillus* wrote: "Does this customary law of nations as established in Europe bind the

United States? An affirmative answer to this is warranted by conclusive reasons," etc. Note the force of an agreement between *Jefferson* and *Hamilton.*

In the case of the Scotia in 1871 Mr. Justice Swayne in delivering the opinion of the United States Supreme Court said: "Undoubtedly no single nation can change the law of the sea. *That law is of universal obligation*, and no statute of one or two nations can create obligations for the world. Like all the laws of nations, *it rests upon the common consent of civilized communities.*"

Has international law a human authority? Yes. "It is *more than a metaphor* to call nations instituting or recognizing usages and customs as laws, *the family of* nations."

Where does this authority to make laws reside? In this family of nations.

How do they exercise this lawmaking power? By their common consent.

How do Hobbes and Austin explain that customs have obtained the force of law? By their maxim that "whatever the *sovereign* permits, he commands." In the making of the common law, the far greater part of English and American law, the

"sovereign" cut but a sorry figure and the inferior people who made the law were very much of an equal. Let us here interrupt Mr. Scott.

As the reader may recall, according to St. Thomas there cannot exist in any state authority to unmake a law made by the custom or repeated acts of a multitude which is free, namely, has the authority to make laws for itself. And according to Suarez, no one can have authority to make laws, the highest authority in government, unless he has received such authority from the multitude either proximately or remotely. In the new code of canon law, canon 25 says: "*In the Church*, a custom obtains the force of law only from the consent of a competent Superior." The reader is begged to note the term "*in the Church*," meaning the Catholic Church. The authority to make ecclesiastical laws, as the authority to teach doctrines pertaining to faith and morals and the authority to administer the sacraments, is vested in the hierarchy by divine law or right. James I claimed that the divine right of Kings was much the same as the divine right of the Pope or the Bishops. The theory of Hobbes and Austin as regards the state is apparently a sequence or remnant of the divine right

of Kings as put forth by the British Solomon and as overthrown by the Doctor who excels, who was the champion selected by Pope Paul V. We continue with Mr. Scott.

Are there any American laws which have no physical human sanctions? Yes. Let us suppose this case. A crime was committed in the State of New York. The criminal has fled into the State of Rhode Island. The crime has been specified as an extraditable offence by the Constitution of the United States and by the Revised Statutes of the United States, and the demand for extradition has been made in the form provided by the statute. In such a case, says Judge Cooley, in *Principles of Constitutional Law*, p. 210, "it is the duty of the executive on whom the demand is made, to respond, and he has no moral right to refuse. Nevertheless, if he does refuse, no power has been conferred on the Federal Courts to compel him." The law exists and it is law, but the physical sanction is absent.

Again, the Constitution in article 3, section 2, declares that the "judicial power shall extend to controversies to which the United States shall be a party; to controversies between two or more

States." Suppose the United States wishes to sue a State, and the State files a cross-bill upon which judgment is given against the United States. How can this judgment be executed? Yet the judge would be astonished to be told that he is not dealing with law in the proper sense; that he was at most *censor morum*, discussing a question of morality, interesting but non-legal, if not illegal because unenforceable.

Thirty years before the Civil War, the State of Georgia defied the Supreme Court of the United States for eighteen months, with the open connivance of President Andrew Jackson who stamped his foot and said: "John Marshall has made the decision: now let him execute it." But the law and the decree were binding and would have been binding even if they had been wholly frustrated.

Have there been similar instances in England? Yes. In the reigns from Henry II to Henry III old local customs, new feudal principles and a good deal of Roman law were fused together into one common law by the people and also by judges to whom, however, little legislative help or sanction was given before Edward I.

Is human sanction essential for a law to be con-

ceived or to exist? No. A law is a rule of conduct which binds. It exists in a perfect state and binds as a law whether or not it is enforced or enforceable. Austin called a law which is not enforced or enforceable mere positive morality. But what is an act positively immoral but an act not immoral in itself but made immoral by a *positive law*, an evil *because prohibited by a law?*

What is the essential nature or function of sanction? It is a means for an end, a means provided for procuring the observance of a law. If public opinion, created by a law and by its application by a judge, produces compliance with a law, why should it not be called a sanction? The fear of social ostracism keeps many a weak-minded or frail being on this side of the bars. Without public opinion back of it, many a law has become a dead letter. *Threat* of imprisonment or death does not do away with crime or the jail or the gallows or the electric chair. No law is always enforced or always enforceable. A law does not thence cease to be a law.

Has international law a human sanction? Yes. Austin said: "The evil which will probably be incurred in case a command be disobeyed or (to

use an equivalent expression) in case a duty be broken, is frequently called a sanction or an enforcement of obedience. Or (varying the phrase) the command or the duty is said to be *sanctioned* or *enforced* by the *chance* of incurring the *evil*. A party lying under a duty or upon whom a duty is incumbent is liable to an evil or inconvenience (to be inflicted by sovereign authority) in case he violate the duty, or disobey the command which imposes it. As Blackstone said and all agree and know, 'Great Britain' and every other great or small civilized nation has accepted international law without which it must cease to be a part of the civilized world." There is no civilized nation which does not dread such a *chance* or rather absolute certainty of incurring this greatest evil sure to be inflicted by the family of nations, the sovereign authority which made positive international law.

We beg leave to interrupt Mr. Scott and to say in our own terms, a nation which openly defies all international law, by the fact is excommunicated and interdicted not only diplomatically but also commercially by the family of civilized nations and unless repentant must soon cease to prosper or

to exist. Let us again hear Mr. Scott. "If modern civilized nations agree to regard a body of rules and regulations as binding them in their mutual dealings and punish infractions of this code by embargo, reprisals, retortions, pacific blockades, and war, it would seem that the sanction—that is, the penalty predicated upon the element of force demanded—is present."

We beg leave to add that a nation which is regarded by private citizens of other nations as a violator of international law or of humanity (humaneness) has much to fear from those private citizens. These may soon lend their money or send arms or other supplies to all the enemies of that nation which is regarded as defying international law and humanity. Let us again hear Mr. Scott.

Has Austin's view of international law as law only in a metaphorical or analogous sense been discredited? Mr. Westlake is perhaps the leading international lawyer of the English-speaking world and he says: "Whatever merit Austin's analysis may have for the law of *a* country, his treatment of international matters appears to be inadequate, as, notwithstanding his great ability, it well may

have been from his not having given them (international matters) much attention. . . . We shall probably feel less surprise that the *revolt* against Austin's nomenclature *has now become so general* than that a writer of such great ability should have adopted it, and that it should have reigned so long in the legal *literature* of England." We beg leave to note the term *literature*, as opposed to British public action through Parliament, Judges, and Statesmen. How does Mr. Scott close his argument? By the following citation from Sir Robert Wiseman: "The inadequacy of its sanctions is an imperfection which attaches to international law in common with all other law; for there is no law so practically perfect as to allow no crime to go without punishment, and no wrong without redress. Opinion and force are the only sanctions of law, and international and municipal law, so far as the former is capable of being administered by judicial tribunals, are in this respect not distinguishable. Nor where this capacity ceases are they *specifically* distinguishable by the mischiefs that attend the means that are necessary to enforce them. The evil of which international law justifies the infliction upon an offending State

reaches its unoffending members; but the punishment which municipal law inflicts upon a criminal, affects his innocent relations. The one is as much *law in the strictest sense of the term* as the other, but it is not capable of being enforced with as much certainty and as little mischief. The difference is a difference of *gradation* and not of *kind*." This is the old common sense axiom: *plus et minus non mutant speciem:* more and less do not change a species: a man's a man for all that, whether he be rich or poor, strong or weak, high or low. A law is a law for all that in essentials though it be not like some other laws in accidentals.

Upon the principles and facts above stated we make some concluding reflections. Many books of law, philosophy, sociology, political economy, etc., now widely used in colleges or high-schools, make it almost their main business to proclaim that by our natural intelligence or reason we cannot know anything as it is. They point the finger of scorn at those whom, in their wide and fierce campaign of frightfulness, they call *intellectualists*, *rationalists*, who hold that we can and do know somethings as they are. They rightly regard Catholics as their most implacable foes, as the most unterrified

democracy facing their pretended aristocracy of wisdom which despises all the wisdom of the past, the priceless heritage of the human race. More than one of their leaders have said that the Catholic Church is founded on Greek philosophy and Roman law. Indeed she has tried her best to keep and use for herself and the civilized world all the treasures of natural truth, justice, and goodness stored in Roman law which she recognizes as *ratio scripta*, written reason, in very many though not all of its paragraphs. However, Roman law is the basis of the private law of all Christian nations except the British Empire and our Great American Republic. Moreover, our own common law itself is largely based on Roman law preserved to the world through the Popes. Thus this is the case of Modernistic Agnostics and the ancient sceptic Sophists *v.* the Catholic Church and the civilized world.

The Church has kept all that is true and good and beautiful in Greek philosophy and in Latin and Greek literature. Thus this is the case of Modernistic Agnostics and the ancient sceptic Sophists *v.* St. Thomas, St. Augustine, Cicero, Aristotle, and the human race and common sense

and hope. It is also the case versus Thomas Jefferson and the United States of America. "We hold these truths to be *self-evident*." Out of school, Agnostics act and talk like intellectualists, rationalists, who know some things as they are. Catholics act and talk that way in school too, and are thus obliged to be the better Americans.

Many of these books hold that there are no "laws of nature and of nature's God." Out of school their authors act and talk like men who hold that there are such laws, that there are some things morally bad in themselves. Catholics act and talk thus in school too. Their schools are thus the more American.

We have seen Popes naming St. Thomas the Doctor Angelicus and Suarez the Doctor Eximius. The Jesuit Cardinal Bellarmine, the nephew of Pope Marcellus, before Suarez arrived and gave the *coup de grâce*, had entered the lists as a champion of the Pope against the British Solomon and his principle of the divine right of Kings. St. Thomas repeatedly lays down the principle that the civil authority must be above the military. They all hold it to be self-evident "that to secure these rights, governments are instituted among

men, deriving their just powers from the consent of the governed."

To say the least, a Catholic may hold this principle and be a good American in mind and heart, without ceasing to be a good Catholic.

We beg leave to make somewhat of a digression which may be interesting. St. Thomas in 2. 2. q. 42. a. 2. ad 2., says: "A government which is tyrannical is not just, because it is not ordained to the common good but to the private good of the governor, as is manifest from the philosopher, (Aristotle, Polit. book 3., c. 5., and Ethics, book 8. c. 10.) And thus the overthrowing of this government has not the nature of sedition; unless perchance when the government of the tyrant is overthrown in such a disorderly way that the subjected multitude suffers greater detriment from the consequent overthrowing, than from the government of the tyrant. But then it is rather the tyrant who is seditious when in the people subjected to himself he fosters discords and seditions that he may be able to domineer more safely. For this is tyrannical, as it is ordained to the special good of him who presides, with hurt to the multitude."

We read in the Declaration: "We hold these truths to be self-evident—that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness." That devoted Catholic and friend of George Washington, Charles Carroll of Carrollton, was not a bad Catholic for signing that article. With him and the other signers, all of us American citizens who are Catholics have special reasons as Catholics for saying: "For the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other, our lives, our fortunes, and our sacred honour."

To return from our digression, let us recall some of the main roots of the above described harmful errors on the concept of positive law in general and international law in particular. To some, man is an animal, but is not rational or is not social by his nature. To others his rational nature is essentially corrupt, and, normally, laws are for him as a criminal impervious to any motive but fear

of force, and are not for him as a reasonable, naturally conscientious lover of order and the common good. To others, though he is a social rational animal, he was not created by God and not endowed by the Creator with natural social rights and duties. To some, political government is thus not ordained by God. To some, separate nations are not ordained by God, and they are each so independent that they do not depend on each other and are not ordained by God to communicate and associate and love and help one another. To these there is no true family of nations. To some, no true law can originate from a custom of the people in a nation or in a family of nations. All sane Protestants and Catholics in the seventeenth century agreed on the principles of international law contradicting these errors, and the immediate result was a great mitigation of the worst atrocities of war. All sane Protestant and Catholic and Hebrew Americans have ever agreed on the principles of the fathers of our glorious Constitution. Except for four years, what peace and prosperity and happiness in our union of sovereign states for the last 131 years!

Is war always a sin? No Christian or Hebrew

who accepts the old or the new testament as the written word of God, can think it always a sin. Chinafy a nation with that Confucian pacifism and you make it the prey of its robber neighbours, as St. Augustine also taught in substance.

Is redress or punishment by war a natural right inherent in sovereignty and independence? According to Suarez, modestly advancing his own private opinion, it is not a strictly natural right but only a concession by the family of nations through its positive international law.

But let us grant that it is a natural right. Rights of life, liberty, property, the pursuit of happiness, are natural rights of individual citizens and yet are limited in their exercise by the laws made by the whole people for the general welfare. Why cannot the right to make war be limited and even its exercise be forbidden, by the family of nations? Why cannot the family stop a fight between two or more of its members? Never before was war so atrocious as in our age of high scientific, industrial, and commercial development. Never before has the family of nations had such a *need* or *right* or *power* to forbid and stop war and to find ways

besides war to right wrongs. Never before have its eyes been so opened to the evils which come to the family from a fight started between two of its members.

In harmony with the principles with which we were blessed by Divine Providence on our birthday of independence, we hold these truths to be self-evident: that not only all men and all nations but also the family of nations are endowed by their Creator with certain unalienable rights; that among these are life, liberty, the pursuit of happiness; that to secure these rights governments are instituted among men deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people (and the family of peoples) to alter or abolish it, and to institute a new government (of a nation or the family of nations) laying its foundations on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.

These last words were penned, as the whistles were blowing and the bells ringing on November 11, 1918. May the eyes of the family of nations

now fixed on us as its saviours be opened to *American Liberty Enlightening the World.* May we, the people of the United States and the peoples of the civilized world, in order to form a more perfect union, establish justice, insure domestic and international tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, ordain and establish a Constitution analogous to the Constitution of the United States of America with an analogous Supreme Court backed by the executives and armies and navies of the civilized world.

Note

"There is no power but from God." Do all Catholic authors in their minds assent to this principle as applied to political governments? Yes, and if they pertinaciously denied it, they would cease to be Catholics.

"Governments instituted among men derive their just powers from the consent of the governed." Do all Catholic authors in their minds assent to this Jeffersonian principle endorsed by the signers of our Declaration of Independence? Yes, says the present French Cardinal Louis Billot, S.J., on page 506, vol-

ume i, of his lectures on the Church which were delivered in the Pontifical Gregorian University at Rome and were published in their third edition in 1909.

Do all Catholic authors agree on the interpretation of this principle? No, says the Cardinal, "for some consider the consent of the governed to the Constitution, or form of government, as a mere condition previous to the special donation of power by God; whereas we, considering that there is no need of any such fiction in the present matter, take this social statute or constitution as the cause by which the general divine donation of natural right is determined to a definite possessor of authority according to a definite form of political government."

In other words, the first school holds, governments derive their just powers from the consent of the governed as a previous *condition* and from God as the immediate or special moral cause; whereas the second school holds, governments derive their just powers from the people's or multitude's consent as the immediate moral *cause* and from God as the general or mediate cause. In marriage, husband and wife are joined by God, but the marital consent of the man and woman is the true immediate cause producing the tie, bond, obligation.

The Jeffersonian principle as understood in the sense of the second school is called by Catholics the Suarezian principle. It was taught by all or nearly all of the Catholic teachers to Catholic youth of the Students' Army Training Corps in the class of "war

aims." In the whole of this book we have supposed the truth of the Jeffersonian principle in the Suarezian sense, but have had no intention of denying that each of the above systems is a free opinion among Catholics.

American Equality and Justice

AMERICAN EQUALITY AND JUSTICE[1]

DURING the Civil War the historic Arlington estate on the heights across the Potomac from Washington City was sold for taxes and bought in by the United States government, which used it as a military station and a national cemetery. Some ten years after the sale, Robert E. Lee's son, Custis, appeared in court and claimed the estate as his property inherited through his mother from his grandfather, George Washington Parke Custis, son of Martha Washington and adopted son of George Washington. He alleged that the sale had been invalid, because the owner had offered to pay the taxes through a friend as agent, and the offer had been rejected, because not made by the owner in person. The jury rendered a verdict in his

[1] This article consists largely of documents gathered by Mr. Hannis Taylor in his treatise on *Due Process of Law and the Equal Protection of the Laws* as enacted by our Constitution and enforced by our courts. It is reproduced here from the *Catholic World* with the kind permission of the editor.

favour against the United States. The case was appealed to the Supreme Court, and the majority of the Justices decreed in favour of Custis Lee.

The time of this trial was the dark reconstruction era from which our memories shrink in horror. The place of the trial was the centre of Federal power. The contested property was a sacred burial ground of soldiers who had died for the Union. The plaintiff in the suit was Custis Lee. He had fought for the "lost cause," and the bloody losses his father had inflicted on the Union armies were fresh in the memory of all. The case is recorded in the United States *Reports* as that of Lee *v.* The United States. It was not the United States Judiciary or Legislative but the Executive that was the defendant. The Attorney-General represented the Chief Executive, who was President Ulysses S. Grant, then in the height of his glory because of his victory over Lee. Those circumstances of time, place, and persons strongly enhance the glowing majesty in the following words of Mr. Justice Miller speaking for the court:

"The Attorney-General asserts the proposition that though it has been ascertained by the verdict of the jury, in which no error is found, that the

plaintiff has the title to the land, and that what is set up by the United States is no title at all, the court can render no judgment in favour of the plaintiff against the defendants in the action, because the latter hold the property as officers and agents of the United States and it is appropriated to lawful public uses.

"*No man in this country is so high that he is above the law.* No officer of the law may set that law at defiance with impunity. All the officers of government from the highest to the lowest are creations of the law and are bound to obey it. It is the *only supreme power* in our system, and every man, who by accepting office participates in its functions, is only the more strongly bound to submit to that supremacy and to observe the limitations which it imposes upon the exercise of the authority which it gives. Courts of justice are established not only to decide upon controverted rights of the citizens as against each other, but also upon rights in controversy between them and the Government, and the docket of this court is crowded with controversies of this latter class. Shall it be said in the face of all this, and of the acknowledged right of the judiciary to decide, in

proper cases, statutes which have been passed by both branches of Congress and approved by the President, to be unconstitutional, that the courts cannot give a remedy when a citizen has been deprived of his property by force, his estate seized and converted to the uses of the government without lawful authority, *without process of law and without compensation, because the President has ordered it and his officers are in possession?*"

As Mr. Dicey has said: "The words 'administrative law' are unknown to English judges and counsel, and are in themselves hardly intelligible without further explanation. This absence from our language of any satisfactory equivalent for the expression *droit administratif*, is significant; the want of a name arises at bottom from our non-recognition of the thing itself. In England, and in countries which, like the United States, derive their common law from English sources, the system of administrative law and the very principles on which it rests are, in truth, unknown. This absence from the institutions of the Union, of anything answering to *droit administratif* arrested the observation of Tocqueville from the first moment when he began his investigations into the charac-

ter of American democracy. In 1831 he writes to an experienced judge (*magistrat*) Monsieur de Blosseville, to ask both for an explanation of the contrast in this matter between French and American institutions, and also for an authoritative explanation of the general ideas governing the *droit administratif* of his country."

As Mr. Taylor says: "Under the French theory, speaking generally, the ordinary tribunals have no concern with administrative law (*droit administratif*) as applied by administrative courts (*tribunaux administratifs*). For example, if a body of policemen in France, who have broken into a monastery, seized its property and expelled its inmates under an administrative order, are charged with what English lawyers would call trespass and assault, the policemen would plead as an exemption the government's mandate in the execution of its decrees dissolving certain religious societies. If the right to plead that exemption is questioned before an ordinary tribunal, a 'conflict' arises which cannot be settled by an ordinary judge under what we would call the *law of the land*. In that illustration we have the sharply defined distinction between a thorough government of

law as distinguished from a government of functionaries."

We note that Mr. Taylor says above "if a body of policemen *in France*." Might he not have said, in any civilized country outside of the British Empire or the United States?

Lieber says: "The guaranty of the supremacy of the law leads to a principle which, as far as I know, it has never been attempted to transplant from the soil inhabited by Anglican people, and which, nevertheless, has been in our system of liberty, the natural production of a thorough government of law as contradistinguished from a government of functionaries."

Was this principle of true liberty and equality under the law unknown to Xenophon, or to the ancient Greeks, or even to the ancient Persians? We leave our friend Mr. Taylor to judge for himself after he has perused the following passage from the *Cyropædia*, Book I., Chapter III. The "Attic Bee" puts these sweet words on the lips of Cyrus the Great, a small boy, and of his mother Mandana, in a conversation held in Media, in the presence of Astyages who was King of the Medes, Mandana's father, and Cyrus's grandfather:

"O Mother, I understand justice exactly already. Because my teacher in Persia appointed me judge over others, as being very exact in the knowledge of justice myself. But once I had some stripes given me for not deciding rightly in a judgment that I gave. The case was this. A bigger boy who had a little coat, stripping a littler boy who had a bigger coat, put on the little boy the coat that was his own, and put on himself the coat that was the little boy's. I, therefore, passing judgment between them, decreed that it was best that each should keep the coat that fitted him best. On this, my teacher gave me a whipping and told me that when I should be made judge of what coat fitted best, I should decide in this way, but when I was to judge whose coat it was, then it must be considered what right possession is, whether he who took a thing by force or he who made or bought it, should have it. And then he told me what was according to law was right, and what was contrary to law was might. He bid me take notice therefore that a judge should give his sentence according to law. So, Mother, I know very exactly what is just in all cases, or if anything is unknown to me, my grandfather here will teach it to me."

"But child," said she, "the same things are not looked on as just by your grandfather here and yonder in Persia. For among the Medes your grandfather has made himself lord and master of all. But among the Persians it is accounted just that all should be equally dealt with. And your father is the first to execute the orders imposed on the whole State and to accept those orders for himself. It is not his own whim but the law that is his rule and measure. How then can you avoid being beaten to death at home when you go back there from your grandfather, trained not in kingly arts but in the arts and manner of tyranny, one of which is to think that power and domination over all is your due?"

Many critics call the *Cyropædia* not biography but romance, not fact but fiction. But our point is that supremacy of law over functionaries was planted during the fourth century before Christ in the soil of the mind of an Athenian military genius who had been a pupil of Socrates.

The French revoluntionary *liberté, égalité* are nebulous. English and American liberty and equality before the law of the land are enforceable by our courts, which can be blind to the high dignity or

the low degree of the contestants and weigh out to each what is equal to his rights or dues according to the law of the land.

The germ of this great element of true liberty and equality is seen in the pledges of the King in Magna Charta: "We will not set forth against any freeman, nor send against him, unless by the lawful judgment of his peers and by the law of the land. To no one will we sell, to no one will we refuse or delay right or justice."

We see many developments of this germ in our Declaration of Independence and in various clauses of our Constitution, but especially in the Fifth and Fourteenth Amendments: "Nor shall any person be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation." "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

For this true liberty and equality which are

thus distinctly defined and are, moreover, enforceable by the courts, America is not indebted to the *doctrinaires* of the French Revolution, but is indebted in great measure to England; and England owes what she has, in great measure, to the so-called Dark Ages and her mediæval Catholic prelates and barons who wrested it at the point of the sword from the tyrant John at Runnymede in the year 1215.

In this respect the guaranty of liberty and equality is greater in the United States than in France and the other countries of continental Europe, and is at least as great as in the British Empire. But in another vital respect, it is greater here than anywhere else. Neither the Privy Council nor any British court has authority to decree that an act of the Omnipotent Imperial British Parliament is unconstitutional and void. Our courts have authority to decree that an act of a State Legislature signed by a Governor or an act of Congress signed by the President is unconstitutional and void.

This unique American protection against bad laws, the worst kind of tyranny, was a curious but natural development from our history. "Each

colony had a legislature with powers limited by the king's charter creating such colony. In colonial times questions arose whether the statutes made by the legislative assemblies were in excess of the powers conferred by the charter. And if the statutes were found to be in excess, they were held to be invalid by the courts, that is to say, in the first instance by the colonial courts, or if the matter was carried to England, by the Privy Council. As a general rule the colonies when they became Sovereign States adopted new constitutions. But the only constitutions of Connecticut until 1818 and of Rhode Island until 1842 were their charters, dating respectively from 1662 and 1663. One of the first cases, if not the very first, in which a legislative enactment of a State was declared unconstitutional and void by a State court, was decided under the charter of Rhode Island. Our Federal Constitution was adopted in 1787. Only in 1803 and in 1810 did the Federal Supreme Court first put the stamp of nullity respectively on a national and a state law as repugnant to the Federal Constitution."

There is not in the Federal Constitution and and there was not, at least originally, in any State

Constitution any line or word expressly giving the Federal or State courts authority to declare a legislative enactment unconstitutional and void. This tremendous authority was supposed and assumed and exercised by the judges, and has been called a product of judge-made law.

The decision of the Supreme Court in the year 1819 in the case of Dartmouth College *v.* The State of New Hampshire was a striking example of American justice enforcing the rights of twelve school managers against the arbitrary and tyrannical abuse of power attempted by a Sovereign State. King George III, by the advice of the Provincial Council of New Hampshire, granted a charter creating a corporation consisting of twelve persons by the name of the "Trustees of Dartmouth College," with power to hold and dispose of lands and goods for the use of the college, to fill vacancies in their own body, to appoint or remove officers of the college, etc. These letters patent were to be good and effectual in law against the king and his heirs and successors for ever, without further grant or confirmation.

About fifty years afterwards, the Legislature of New Hampshire professing to enlarge, improve,

and amend this charter, created, by a new charter, a new corporation, under a new name, adding to the twelve original trustees nine others to be appointed by the governor and council of New Hampshire, and subjecting these twenty-one trustees to the power and control of twenty-five overseers to be appointed by the governor and council of New Hampshire. To this new corporation were transferred all the property, rights, liberties, and privileges of the old corporation.

The original twelve trustees refused to consent to this change, and applied in vain to the Superior Court of Appeals of New Hampshire, which held that the act of the Legislature was not repugnant to the Constitution of New Hampshire or to that of the United States. These twelve trustees then appealed to the Supreme Court of the United States, and employed as one of their advocates Mr. Daniel Webster, who made his famous plea which is regarded as a classic not only of eloquence but also of law. In February, 1819, the United States Supreme Court decreed that the act of the New Hampshire Legislature was void as violating the Constitution of the United States in Article I, Section 10, Paragraph 1: "No State

shall pass any law impairing the obligation of contracts."

Here there was a contract, namely, an agreement in which a party undertook to do or not to do a particular thing; a contract between the king, representing the public or state, and the twelve trustees of Dartmouth College; a donation of rights by the king as grantor, an acceptance of these rights by the twelve trustees, as grantees. And he who grants rights for ever, obligates himself never to take back the rights granted. Here there were what are called vested rights, not chances or possibilities of rights, but immediate fixed rights of present or future enjoyment. Here there were property rights, rights to administer property for the purpose of education. Here there were vested property rights arising from a contract. If the State of New Hampshire did not entirely take away these rights from one person, the old corporation, and give them to another person, the new corporation, and thus entirely *destroy* the obligation of the contract, at least it passed a law *impairing*, abridging the obligation of the contract by lessening the powers of the twelve trustees, *impairing* the obligation of the public or state to

perform its undertaking not to do this particular thing, namely, not to take back rights which it had granted.

As Mr. Webster demonstrated in his exhaustive argument, the act of the New Hampshire Legislature was contrary to American precedents. Thus North Carolina had created its university and donated lands. The North Carolina Legislature rescinded the donation. But the North Carolina courts decreed that legislative act rescinding the donation to be void. After this decree the North Carolina Legislature itself gracefully confessed and repaired its own sin of injustice by repealing that act.

Likewise in the State of Virginia it had been attempted to take away from the Episcopal Church certain glebe lands alleged to have been donated by the people or the colonial government of Virginia. The matter came before the United States Supreme Court in the case of Terrett *v.* Taylor. The opinion of the court was rendered through the illustrious scholar, Mr. Joseph Story. The following are some of his noble words:

"That the legislature can repeal statutes creating private corporations and by such repeal vest

their property exclusively in the State, or dispose of it to such purposes as the State pleases, without the consent or the default of the incorporators, we are not prepared to admit. And we think ourselves standing on the principles of natural justice, upon the fundamental laws of every free government, upon the spirit and the letter of the Constitution of the United States, and upon the decisions of most respectable tribunals, in resisting such doctrines."

The decision of the Supreme Court on June 1, 1908, in the case of "The Municipality of Ponce *v.* The Roman Catholic Apostolic Church in Porto Rico" gave a similar equal protection of the laws to Catholics.

After the change of sovereignty from Spain to the United States, the City Council of Ponce recorded two churches and the lots on which they are situated in the inventory of the property of the municipality. The Bishop of San Juan applied to the Supreme Court of Porto Rico, which decreed that those edifices and lots were the property of the Catholic Church and barred all adverse claims of the municipality. The municipality then appealed to the Supreme Court at Washington. One of

the clauses of the appeal alleged "that the Roman Catholic Church of Porto Rico has not the legal capacity to sue, for the reason that it is not a judicial person, nor a legal entity, and is without legal incorporation. If it is a corporation or association, we submit to the court that it is necessary for the Roman Catholic Church to allege specifically its incorporation, where incorporated, and by virtue of what authority or law it was incorporated, and if a foreign corporation, show that it has filed its articles of incorporation or association in the proper office of the government in accordance with the laws of Porto Rico."

To this contention the Supreme Court replied in full. We give this reply in part. By the general rule of public law recognized by the United States, whenever political jurisdiction and legislative power are transferred from one nation to another, the laws of the country which is transferred, intended for the protection of private rights, continue in force until abrogated or changed by the new government. The Spanish civil code in force in Porto Rico at the time of the transfer, contains the following provisions: Article XXXV —"The following are judicial persons: the corpora-

tions and institutions of public interest recognized by law." Article XXXVIII.—"The Church shall be governed in this particular by what has been agreed on by both parties" (Spain and the Holy See in concordats recognizing the right of the Church to acquire and possess property). Article VIII of the Treaty of Paris between Spain and the United States says: "It is hereby decreed that the relinquishment or cession as the case may be, to which the preceding paragraph refers, cannot in any respect impair the property or rights which by law belong to the peaceful possession of property of all kinds of provinces, municipalities, public or private establishments, *ecclesiastical* or civic *bodies*, or any other associations having legal capacity to acquire and possess property in the aforesaid territories renounced or ceded."

No other ecclesiastical body but the Roman Catholic Church existed in the island at the time of the cession. This article of the treaty was manifestly intended to guard Catholic Church property from spoliation or interference by the new master or any of his agents.

Indeed, the suggestion that the Roman Catholic Church is not a legal person entitled to maintain

its property rights in the courts, does not deserve serious consideration, when made with reference to an institution which antedates by almost a thousand years any other personality in Europe. The Code of Justinian contains the law of Constantine of the year three hundred and twenty-one to the effect that the Roman Catholic Church was recognized as a legal person with the capacity to acquire property. The United States have always recognized the corporate existence of the Roman Catholic Church as well as the position occupied by the Papacy. It is the settled law of this court that a dedication to a public or charitable use may exist even where there is no specific corporation to take as grantee. As the court said through Mr. Justice Story in the case of Terrett *v.* Taylor, it makes no difference that a church was a voluntary society clothed with corporate powers.

The fact that the municipality may have furnished some of the funds for building or repairing the church edifices, does not affect the title of the Roman Catholic Church to whom such funds were irrevocably donated.

The above opinion in favour of the Holy Roman Catholic Apostolic Church in Porto Rico was given

through Mr. Chief Justice Fuller, the other Justices unanimously concurring, and follows almost verbatim the brief filed by Mr. Frederic R. Coudert of counsel for the Bishop of San Juan.

The French Constitution of 1795 says: "Equality consists in this that the laws which protect or which punish shall be the same for all." But is there a court either in France or Spain or Italy or Austria or the German Empire with authority to say to President, King, or Kaiser or to both President, King, or Kaiser and his respective National Legislature, I decree that your act is unconstitutional and void, and it violates liberty, equality, justice, and I command you to bow down to the fundamental law of the land and to undo what you have wrongly done? Is there in their system any practical guaranty like ours that the rights of private citizens or of minorities shall be secure against injustice by public functionaries or majorities?

Some have been grossly wronged by Latin republics and therefore dislike all republics, and especially our great government of the people, by the people, for the people, whose continued and growing success has been the main cause of the

almost world-wide demand for democracy. But we beg leave to remind these haters of all republics that we owe no thanks for our Constitution or Supreme Court to Jean Jacques Rousseau. We owe some thanks for our Constitution to principles of liberty and justice preserved by England from the Catholic Middle Ages in the face of the absolutism of the Reformation and the French Revolution. We owe our Supreme Court as a check on the tryanny of legislative assemblies to our own history and traditions and to our own practical wisdom in discovering and preserving this check.

Some who are recent arrivals on our shores have asked whether it is democracy to vest such tremendous powers in nine men holding office for life. It is *American democracy* which thus secures the supremacy of the Constitution, the fundamental law of the land which is a crystallization of the most deliberate will of the whole people ordering fundamental things for the good of the whole people.

Few realize how this efficient security for life, liberty, property and the equal protection of the laws, has operated to attract and hold immigration, capital, and labor and to promote our un-

precedented wealth and prosperity. We could wish no greater blessing than a Supreme Court like ours to our sister American Republics, or, indeed, to each of our fellow-members in the family of nations. We American Catholics recognize that this security for our Catholic liberties and our Catholic property has been a great cause of our religious progress, and we long for the day when Catholics in all other lands will have a Supreme Court like ours ever ready to protect them, as it has stood ever ready to protect us for over a hundred years.

The Case of Socialism v. The Catholic Church and the United States

THE CASE OF SOCIALISM *v.* THE CATHOLIC CHURCH AND THE UNITED STATES[1]

THIS paper was read in Cathedral College Hall on December 18 and 20, 1917, to Catholic pastors and assistants, presided over by His Most Reverend Eminence John Cardinal Farley. In the discussion which followed the reading, the paper was approved as representing the views of those present. This brief puts together some texts, on the one hand, from Encyclicals of Pope Leo XIII and accepted maxims of Catholic jurists and, on the other hand, from our Declaration of Independence and amendments of our Federal Constitution and pronouncements of our Federal Supreme Court Justices interpreting clauses of the Declaration and amendments. In these authentic texts the

[1] *Cf.* Vermeersch, *Quæstiones de Justitia*, n. 231 *et seq.* Hannis Taylor, *Due Process of Law*, p. 491 *et seq.* This article is reproduced here from the *Catholic World* with the kind permission of the editor.

reader is enabled to see with his own eyes that the Catholic Church and the United States hold the same fundamental principles on the right of private property as founded on nature and God, and as limited by the ample authority of the State and its laws made for the general welfare. Socialism denies that the right of private property is from nature and God, and is thus seen to be fundamentally anti-Catholic and anti-American. Given the Catholic and American principle that the right of private property, although derived from nature and God, is yet circumscribed by limits imposed on it by the necessities of our neighbour and the ample authority of the State to enact new laws suited to new conditions, there is, at least in our country, no excuse to heed clamours of Socialists or the Socialistic for a reconstitution of society. It is hoped that the texts here put together, with some explanations of the meaning of their terms, will help to satisfy minds now more or less bewildered by dogmatisms which led to the Reign of Terror, the Paris Commune and the Russian Bolsheviki.

What is meant by the right of private property? It is the right in private individuals of perfectly disposing of a corporeal thing unless these in-

dividuals are prohibited by the law. This definition was made by Bartoli. It is commonly accepted by other jurists and also by the great scholastics such as Molina, Lessius, and Lugo.

Another definition which is widely received is: The right of disposing, for one's own advantage, of the utility and the substance of a thing, within the limits placed by a just law. This definition more clearly distinguishes between the dominion of property and the dominion of jurisdiction, which latter includes the right to dispose not for individual advantage but for the general welfare. It also more explicitly explains what is meant by disposing *perfectly*. It mentions not only the utility but also the substance of a thing.

With these definitions is in accord a celebrated description of the right of property by an anonymous Roman jurist: "*Jus utendi et abutendi quatenus juris ratio patitur*—the right of using and abusing in so far as the law allows." Here *abusing* means *consuming*, and not abusing in the bad sense, and also refers not only to the utility but to the substance of a thing. As the reader may have noted, the definitions accepted by Catholics all limit this right by laws for the common good.

These definitions do not limit the right of property by the extreme necessities of others. Such necessities rarely occur. It is perhaps more prudent not to provide for them in explicit definitions or laws which might be easily misunderstood or misapplied, and thus become occasions of dangerous suggestions in practice. However this limitation, though not expressed, ought to be ever implied. This article treats of the right of property in the sense of a generic institution as opposed to communism as a generic institution, under which ***no one*** would have the right of private property. As Lugo observes, "the concrete manner in which this right exists is not *completely* from natural law alone, but depends, at least negatively, on human law; not only because many ways can be introduced of acquiring, losing, and transferring dominion, and in fact have been introduced, by merely human law; but also because other ways of acquiring dominion which seem to have been introduced by natural law, still, at least negatively, depend on human law, since they could have been prevented by human law; as, in fact, many individuals are rendered by human law *incapable* of acquiring dominion."

Furthermore, we here speak of nature, natural rights, and natural law, as the remote and not as the proximate moral cause of the right of property. Thus in our country all the titles to land came first from the State.

The right of property is not a natural right so strictly as the right to marry, which would exist among men, however few, and even though not regarded as infected by selfish inclinations coming from original sin. The right of property must exist among men who live together in a great number, especially since they are infected by original sin. In such a condition it would be wrong not to have some kind of civil government with civil authority. The right of private property is from nature in the same sense, but would exist even though no civil government existed.

Let us now hear some of the words of Leo XIII teaching that the right of private property is from nature, under God and His providence.

The following passage is from the Encyclical *Quod Apostolici Muneris*, December 26, 1878:

"More wisely and profitably the Church recognizes the existence of inequality amongst men who are by nature unlike in mental endowments, and

in strength of body, and even in amount of fortune: and she enjoins that the right of property and of its disposal, *derived from nature*, should in the case of every individual remain intact and inviolate. She knows full well that *robbery* and *rapine* have been so forbidden by God, the Author and Protector of every right, that it is unlawful even to covet the goods of others, and that thieves and robbers, no less than adulterers and idolaters are excluded from the kingdom of heaven. . . . Moreover, she lays the rich under strict command to give of their superfluity to the poor, impresssing them with the fear of the divine judgment which will exact the penalty of the eternal punishment unless they succor the wants of the needy."

The following passages are from the Encyclical *Rerum Novarum*, May 15, 1891:

"The Socialists, working on the poor man's envy of the rich, are striving to do away with private property, and contend that individual possessions should become the common property of all to be administered by the State or municipal bodies.

"These contentions are emphatically unjust because they would rob the lawful possessor, bring State action into a sphere not within its compe-

tence, and create utter confusion in the community.

"Every man has *by nature* the right to possess property as his own.

"Man precedes the State, and possesses, prior to the formation of any State, the right of providing for the sustenance of his body.

"*The limits of private possessions* have been left (by God) to be fixed by man's own industry, and *by the laws of individual races.*

"With reason, the common opinion of mankind —little affected by the few dissentients who have contended for the opposite view—has found in the careful study of nature, and the laws of nature, the foundations of the division of property; and the practice of *all ages* has consecrated the principles of private ownership, as being pre-eminently in conformity with human nature, and as conducing in the most unmistakable human manner to the peace and tranquillity of human existence. This same principle is confirmed and enforced by the civil laws—which, as long as they are just, derive from the law of nature their binding force. The authority of the divine law adds its sanction, forbidding us in severest terms even to covet that

which is another's: 'Thou shalt not covet thy neighbour's wife: nor his house, nor his field, nor his man-servant, nor his maid-servant, nor his ox, nor his ass, nor anything which is his.'

"The right of property which has been proved to belong naturally to individual persons must likewise belong to a man in his capacity as head of a family: nay, such a person must possess this right so much the more clearly, in proportion as his position multiplies his duties.

"*The main tenet of Socialism, community of goods, is directly contrary to the natural rights of mankind.*

"Justice demands that the interests of the poorer classes should be carefully watched over by the administration, and that they who so largely contribute to the advantage of the community may themselves share in the benefits which they create, that, being housed, clothed, and enabled to sustain life, they may find their existence less hard and more endurable.

"When there is a question of defending the rights of individuals, the poor and helpless have a claim to special consideration (from the State)."

What is the theological note of this part of our thesis? What theological censure would be in-

curred by him who would deny its truth? In our answer we follow Vermeersch, *Questions on Justice*, n. 198. That the system of private property is licit, is not unjust, is clearly contained in Scripture, and is to be held as of *Catholic faith*. He who would affirm that this system has its origin from the State and would deny that any right of private property has its origin in nature, would openly contradict the teaching of Leo XIII and incur the censure of temerity, to say the least.

Can a Catholic be a Socialist? Not if he holds the main tenet of the Socialists, namely, that all individual possessions should become the property of all, to be administered by the State or municipal bodies, or that the right of private property comes from the State and not from nature and God.

The words of the Declaration of Independence which are in accord with those of Pope Leo, are: "We hold these truths to be self-evident, that all men are endowed by their Creator with certain unalienable rights and that among these are Life, Liberty, and the Pursuit of Happiness; and to secure these, governments have been instituted among men."

The Fifth Amendment of the Constitution says:

"No person shall be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation."

This Fifth Amendment, ratified in 1791, limited the power of the Federal Government and not the States. But the Fourteenth Amendment, ratified in 1868, says: "Nor shall any *State* deprive any person of life, liberty, or property without due process of law."

This amendment was made in order to limit the power of the States. The teaching of the Supreme Court on the origin of these rights is seen in the following words of Justice Field, cited by Mr. Hannis Taylor in his new work on *Due Process of Law*, page 491: "'As in our intercourse with our fellowmen, certain principles of morality are assumed to exist, without which society would be impossible, so certain inherent rights lie at the foundation of all governmental action, and upon a recognition of them alone, can free institutions be maintained. These inherent rights have never been more happily expressed than in the Declaration of Independence, that new Evangel of liberty to the people: "We hold these truths to be self-

evident," that is, so plain that their truth is recognized upon their mere statement; "that all men are endowed," not by Edicts of Emperors or Decrees of Parliament or Acts of Congress, but "by their Creator, with certain unalienable rights," that is, rights which cannot be bartered away, or given away, or taken away, except for punishment of crime; "and that among these are Life, Liberty, and the Pursuit of Happiness, and to secure these," not to grant them, but to secure them, "governments are instituted among men." . . . Among these inalienable rights, as proclaimed in that great document, is the right of men to pursue their happiness, by which is meant the right to pursue any lawful business or vocation, in any matter not inconsistent with the equal rights of others, which may increase their property, or develop their faculties, so as to give them their highest enjoyment.'

"The Fourteenth Amendment was intended to give practical effect to the Declaration of 1776 of inalienable rights, rights which are the gifts of the Creator, which the law does not confer, but only recognizes." In the same case Justice Swayne said: "Property is everything which has exchange-

able value, and the right of property includes the power to dispose of it according to the will of the owner. Labor is property, and, as such, means protection. The right to make it available is next in importance to the rights of life and liberty." In Allgeyer *v.* Louisiana the Court said: "The liberty mentioned in the Fourteenth Amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will, to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary, and essential to carry out to a successful conclusion the purposes above mentioned."

In Adair *v.* United States the Court said: "Each right is subject to the fundamental condition that no contract, whatever its subject matter, can be sustained, which the law, upon reasonable grounds, forbids as inconsistent with the public interests, or as hurtful to the public order, or as detrimental to the common good."

The rights of life, liberty, and property are all subject to certain sovereign powers of the State, such as the taxing power, the power of eminent domain, and the police power. Therefore such rights are not inalienable in any strictly absolute sense. The State may rightfully call on a citizen to serve in the army and give his life for his country and its rights and liberties. The State can rightfully restrain any man from carrying on a business which is immoral, or injurious to public morals, or which causes a reasonable suspicion of immorality, or of injustice, private or public. Any business affected with a public interest may be regulated, provided due consideration be given to vested rights and to prior contracts entered into by the State. Purely private vocations are as a general rule not subject to restraint by State power.

"However, the most innocent and Constitutionally protected of acts or omissions may be made a step in a criminal plot, and if it is a step in such a plot, neither its innocence nor the constitution is sufficient to prevent the punishment of such a plot by law." Thus Congress passed the Sherman Act and the Clayton Act to prevent and punish acts tending to monopoly, to forcing prices,

to restraining the free flow of trade by combinations which block free and fair competition. The Sherman Act has been already upheld by the Supreme Court as not contrary to the rights of liberty and property and freedom of contract. State laws imposing a minimum wage for women or children working in factories, have been upheld by the Supreme Court as being not arbitrary but reasonable restraints imposed on capitalists in the use of their property and the exercise of their liberty. The Sixteenth Amendment to the Federal Constitution, finally ratified in the year 1913, empowers Congress to impose the income tax, and Congress has emphasized by practical measures the principle that he who receives more individually, owes more for the general welfare.

States have made many local laws limiting liberty to dispose of one's own labor or to exercise other property rights. On appeal against these laws for alleged violation of rights guaranteed by the Declaration of Independence or by the Constitution, the Supreme Court has ever held that these laws are void if they are arbitrary, but are valid if they are reasonable or not manifestly unreasonable or arbitrary.

Some countries have no clear-cut written constitution. Our country is unique not only in having the oldest written Constitution but also, and especially, in having as the guardian of the Constitution, a Supreme Court, a Judiciary which is not subordinate but co-ordinate with the Legislature and the Executive, a Judiciary whose members hold office during life or good behaviour, and can be removed from office only through impeachment by a majority of the House before the Senate, the more slow and conservative branch of the Congress. Our Federal Judiciary thus far have had little to fear from the insolence of office and power or from clamours of the multitude. Through the wisdom of Washington and Jefferson and Hamilton and Madison and Pinckney and the other fathers, we have in our explicit fundamental laws the sane principles of St. Thomas and Leo XIII on the right of property as from nature and nature's God, and on the limitations of this right by the States or the United States, acting reasonably for the common good, and on their ample authority to introduce social reforms which may be deemed needful or useful in our day of big business with big capital. There is not and never was a country

where the law made property more sacred and secure. Though the most conservative in this respect, our country can lawfully be also most progressive on sane lines, truly Catholic and truly American. There could be no shadow of an excuse for transplanting to American soil foreign Socialism, whose main tenet is public ownership and public administration of all wealth-producing property. Socialism is not only most anti-Catholic, but, by the fact, also most anti-American. For these principles, how America should love the Church and the Church America, nay, how the whole world should love the Church and America as the two mightiest guardians of principles which are saviours of society from envy, madness, anarchy, misery, and slavery!

Do Kings and Emperors Reign by Divine Right?

APPENDIX[1]

THE ESSENTIAL DIFFERENCE BETWEEN THE FORMS OF GOVERNMENT IN THE CATHOLIC CHURCH AND IN POLITICAL SOCIETIES

THE question about the form of ecclesiastical government in general turns almost wholly on marking the fundamental difference between ecclesiastical hierarchical government and all actual or possible constitutions of civil governments. As must be borne in mind, there has been an opinion among some that the norm proper to civil governments must be applied proportionally also to the government of the Church; and conversely, that the norm proper to the govern-

[1] This appendix is an extract from Volume I of a treatise on the Church of Christ by His Eminence Louis Cardinal Billot, S. J. Father Semple returns his most hearty thanks for the gracious permission to reproduce in homely literal English the Ciceronian Latin of the Cardinal's masterpiece.

ment of the Church must be applied proportionally also to civil governments; and from this opinion there has come forth at times a corrupted and adulterated notion of the constitution of the Church, and at other times what seems to us an inaccurate way of thinking about the nature of civil government.

The ancient Gallicans of the era of the Councils of Constance and Basle certainly transferred to the Church the then common ideas of political government: "From natural law there is established the authority of the community of the Church over the Pope, in this, that by the law of nature the Church is a perfect and free community to which it belongs to provide itself with a sovereign and to defend itself against him when he uses his power for destruction, and to coerce and remove him when he becomes unworthy. For if to this principle there is added that the universal Church is a perfect and free community, and that the order of grace instituted by Jesus Christ does not take away nature but perfects it, it is manifestly concluded that it belongs to the universal Church to provide itself with a Pope and to defend itself against him, and also to depose him, and

universally to be above him." (Cajetan, Tract. 2, *de auctoritate Papae et Concilii*, c. 1.) Such, I say, were the teachings of the ancient Gallicans, following Gerson, Petrus de Alliaco and other Sorbonnists of the fourteenth and fifteenth centuries. They based these teachings on an analogy derived from natural societies. They did not go so far and were not so inconsistent as to deny that there is in the Church a pure monarchy which they regarded as existing in civil government by a kind of divine right. For that other monster of the schools had its origin only from the Gallicans of the age following (*Cf. J. de Maistre, du Pape*, L. 2, c. 1.) For the present we leave those preceding opinions aside. Nowadays there has crept in another opinion which is diametrically opposed to the preceding and yet is based upon, or at least concordant with, that invented parallelism between ecclesiastical and civil government. This latter opinion cannot by any means be branded as erroneous. Yet it has disadvantages on which controversies that have most recently arisen, have thrown a new light. Indeed the ancient Gallicans were altogether erroneous with regard to the constitution of ecclesiastical government, when they

transferred to it the principles which were in their times universally received about the constitution of the State. But now some others, having corrected the error of Gallicanism, inversely introduce into the constitution of the State most true principles which seem to us to belong only to hierarchical government. These wish that the power of sovereigns be immediately from God, contradicting the ancient and common doctrine of theologians stating: "that indeed all power is from God, and yet one power is from God immediately, as in the case of the Supreme Pontiff, but another is from God by the mediation of human consent, as in the case of temporal sovereigns." (Bellarmine, against John Marsilius, response to the third capitulum).

This different way of thinking is not to be looked on as indifferent. For on it depend consequences most relevant to the understanding of ecclesiastical history, to the explaining of pontifical documents, and to the observing of the duties of a Christian towards constituted authorities. At present we shall touch on this matter mainly in order to clarify the proper and distinctive condition of ecclesiastical government, which can not

be better shown than by instituting a comparison with political government considered in its origins and in its various forms.

SECTION I

The Origins and Forms of Political Sovereignty

We call political power that by which a people is ruled for the purpose of temporal tranquillity and prosperity. You must radically distinguish this from the power of the master. For the power of the master pertains to the right of property. It is the power of the owner over the slave, and is thus ordained to the good, not of the slave, but of the owner; for the slave as such is not for the sake of himself, but for the sake of another. But political power is by no means for the good of the ruler, but only for the good of the community over which the ruler presides, so that Bellarmine says justly and rightly: "Political differs from servile subjection in this, that he who is subject servilely, is and works for another: he who is subject politically,

is and works for himself. The slave is ruled not for his own advantage but for that of his owner; the citizen is ruled for his own advantage, not for the advantage of the magistrate. Whereas, on the other hand, the political sovereign, in ruling the people, seeks not his own utility but that of the people: but the tyrant and master seek the utility not of the people but of themselves, as Aristotle teaches (book 8, *Ethics*, c. 10). Thus, in truth, if there be any slavery in political sovereignity, he who presides more properly ought to be said to be the slave than he who is subject, as Augustine teaches (book 19, chapter 14, *de Civitate*); and this is the literal meaning of the words of the Lord (Matt. xx): "He among you who shall wish to be made first, shall be the slave of all." Thus bishops call themselves the servants of their peoples and the Supreme Pontiff calls himself the servant of the servants of God."

There have gone forth most diverse teachings on the origin of political sovereignty. Therefore we must establish as our foundation the immovable dogma on which, in this matter, all Catholics must, and in fact, do agree.

1. *Political Power in Itself is from God, the Author of Nature.*

This proposition is against the asserters of the social contract, who falsely hold that all social power is from the community as its *original* source; and that the community is the *original* source of power in so far as each individual member of the community has conferred on it all of his own individual rights. For, if you believe those delirious philosophers, all men are born so independent of each other that by natural law there is not incumbent on any one of them any duty limiting his personal liberty; likewise no one is endowed with any right limiting the liberty of another. Nay more, this same liberty for the use of the good things of this world and for the exercise of our inborn faculties is so much the property of each one, that only by a free contract can it be resigned into the hands of the community. Forsooth, only through the social contract are there observed the conditions of justice, all and each equally and freely intervening, and equally ceding their rights. This compact once made, the community becomes the only source and the only

principle of all rights and duties, and, besides many other things, this also is a consequence, that every magistrate is nothing more than the pure and simple executor of the will of the people, and can always be recalled at the beck of the people. Leo XIII in his Encyclical *Diurnum* said: "Very many in recent times following in the footsteps of those who in the eighteenth century arrogated to themselves the name of philosophers, say that all power is from the people; whence those who exercise this power in the state exercise it not as their own but as a trust from the people to them, and indeed under this law that by the will of the people by whom it has been entrusted, it can be recalled." To state that invention is to refute it. On its face it is manifested as impious in its foundations, incoherent in its conception, monstrous in its consequences, and finally, in its entirety, chimerical and absurd. I say it is impious in its foundations. It takes its start from atheism, that is, from the radical negation of the subjection of man to God and to His law. It is incoherent in its conception, because if the inborn liberty of man cannot be limited by any duty or by any right *before* a compact, it does

not appear why *by* a compact it can be alienated either in whole or in part, especially why it can be alienated irrevocably; since if you take away the higher law which gives obligatory force to compacts and donations among men, no stable transfer of dominion from one to another can in any way be conceived. It is also monstrous in its consequences, namely in prostrating all things before the idol of the community, and, in point of fact, subjects all other private citizens to the unbridled violence and tyranny of the predominant faction. In fine, it is in its entirety ridiculous and absurd, because it assigns to society a chimerical origin which our consciousness and the history of the human race and facts clearer than the noonday sun all contradict. We have no mind to pursue these vagaries farther, but, in passing, note these two things to which as its supreme heads the whole system is reduced. The first is that political power is from the people *only*, and both in its making and in its existence is dependent on the people's *supreme* sovereignty. The second is that popular sovereignty itself originates from a contract, namely in so far as each member of society *voluntarily* cedes his own right, and single

individuals have voluntarily given themselves up into its power, so that the sum of those rights has come into the power of the community. Now by their own natural weight the first of these principles drags down to perfect anarchy, and the second to perfect despotism and monstrous communism.

"The people is sovereign and the government is only its clerk, less than its clerk, its domestic. Between the people and the government there is no contract which is indefinite or, at least, durable. *It is contrary to the nature of the body politic that the sovereign impose on himself a law which he can never infringe.* No consecrated and inviolable charter which enchains a people to established constitutional forms. The right to change them is the first of all guaranties. There is not, there cannot be, any fundamental law obligating the body of the people, not even the social contract. The act by which a people submits itself to its chiefs is absolutely nothing but a commission, an employment in which, as simple officials of the sovereign, they exercise, in his name, the power of which the people has made them depositaries, the power which the people can modify, limit, take back when it pleases. In the face of the

people, they have no right. For them there is no question of contracting but of obeying. They have no conditions to make. They cannot claim from the people the fulfilling of any engagement. Whether they like it or not, they are the serfs of the State, viler than a valet or a menial, since the menial works under conditions which have been debated, and the valet who is driven out can claim his eight days. As soon as the government gets out of this attitude, it usurps, and the constitutions will proclaim that, in this case, insurrection is not only the most holy of rights but even the first of duties." Taine, the ancient régime, (Book 3, Chapter 4, Section 3, citing Rousseau, *Social Contract*, 1–7, III–1, IV–3, etc.)[1]

"The theory has two faces, and while from one

[1] The translator takes the liberty to place under the reader's eyes some well-known lines in which he will see that the author and the signers of the Declaration of Independence were to Rousseau as daylight to dark, as Washington to Robespierre.

"When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which *the laws of nature, and of nature's God entitle them*. . . .

"We hold these truths to be self-evident: that all men are *created* equal; *that they are endowed by their Creator with certain unalienable rights;* that among these are life, liberty, and the pursuit of happiness. That to *secure* these rights, governments are insti-

it leads to the perpetual demolition of government, from the other, it ends in the unlimited dictatorship of the State. In effect, the clauses of the social contract all reduce themselves to one alone, namely, the total alienation of each associate with *all* his rights, to the community. Each gives himself *whole* and *entire*, as he actually is, *himself* and *all his faculties* of which the goods he possesses form a part. No exception, no reserve. *Nothing* that he was or had before, belongs to him

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tuted among men, deriving their *just powers from the consent of the governed*. . . .

"Prudence, indeed, will dictate that governments, long established, should *not* be changed for light and transient causes. . . . And, for the support of this declaration, with a firm reliance on the protection of *Divine Providence*, we mutually pledge to each other, our lives, our fortunes, and our sacred honor."

Here all rights or powers are originally from God. Some rights, given by God, are *inalienable*. Governments have been instituted among men to *secure* them. The Declaration is not impious but pious in its foundations. It is not self-contradictory but consistent in its conception. It is not monstrous but beneficent in its consequences, as time also has shown. It is not, in its entirety, chimerical and absurd. It does not assign to society a chimerical origin which our consciousness and the history of the human race and facts clearer than the noon-day sun, contradict. It assigns God as the original source and the consent of the governed as the mediate source of the just powers of government. This last point is in accord with our consciousness and the history of the human race and facts clearer than the noon-day sun, as Cardinal Billot demonstrates further on.

as his own. What he will afterwards be or have, will devolve to him only by the delegation of the social body, the *universal proprietor* and the *absolute master*. Necessarily the State must have *all* the rights, and particular persons *none:* else there would be litigations between them and the State, and as there is no common superior who can decide between them and it, these litigations would be interminable. On the contrary, by the *complete* donation which each one makes of himself, the union is as perfect as possible. Having renounced *all* and *himself*, there is nothing left to reclaim. . . . All these articles are necessary sequences of the social contract. From the moment I enter the body, by this entry alone, I renounce *my goods, my children, my church, my opinions*. I cease to be a property owner, a father, a Christian, a philosopher. It is the State which makes itself my substitute in all these functions. In the place of my will, there is thenceforth the public will; that is, in theory, there is the changing arbitrary will of the majority counted by heads; in fact, there is the rigid arbitrary will of an assembly, of a faction, of an individual who holds the public power." Taine., l. c., sections 4 and 5.

From these deliriums are far, far distant Catholic theologians. To a man, they all derive political power from God as its natural and necessary source. Indeed, if society is not for the destruction but for the *securing* of individual rights, it is utterly impossible for sovereignty to coalesce from the *alienation* of these rights and from their *absorption* in the social mass. Again, if men are united into civil society not by their *mere* choice but by their natural destination and *necessity*, no matter what human commission or institution you invent to procure the common good and to keep the rights of private individuals safe and sound, you have not by any means reached the true origin of political power. The institution of government is necessarily from Him from whom the institution of society is derived; but civil society as such is not from the *arbitrary* will of men; therefore neither is government. Thus you must necessarily rise to God. Since He is the Author of human nature, by that fact He is the Author of that society which is natural to men and consequently He is the author of government or authority without which that society cannot subsist. Thence the theologians teach that polit-

ical authority originates from the divine natural law, as soon as men are present together to complete the one body of the commonwealth, but by no means from this that men *will* to subject themselves to it, and *elect* it over themselves for their common good by their *arbitrary* will in the way some congregated for any other thing, for example, for a commercial or academic end, would elect for themselves some common authority. For this latter authority, being instituted for a society which is arbitrary and in no sense natural, would not have its origin from God immediately through His natural law, but from the men who freely subject themselves to it; and the authority or power would not be greater than men had constituted according to their arbitrary will. But that other former power is from the very nature of the matter, and does not depend on the consent of men; for whether they wish or not, they *ought* to be governed by someone lest the human race perish, a thing against nature. And because the law of nature is the law of God, it follows that civil government has been introduced by the law of God; and this is the proper sense of the words of the Apostle, Rom. iii, 1: "There is no power but

from God; but those things that are, have been ordained by God. Therefore, he who resisteth the power resisteth the ordinance of God." And below: "He is the minister of God."[1]

As is clear from the nature of political power thus explained, there is a world-wide difference between every opinion freely held by scholastics and those inventions of revolutionaries. According to the opinion of most of the ancient scholastics, power is in sovereigns or magistrates communicated by the people. But there is no one but sees how far is this opinion from the subversive principles stated above, and indeed both as to speculative considerations and as to practical consequences. For in the first place, in this opinion of the scholastics the right itself of governing is not created by any human fact, or any will of contracting parties, or by the concentration of individual rights in the social mass, or by any agreement of the members of the multitude; but is from above, from God, the Author of nature, whensoever this right is adjoined to the matter of

[1] These are almost the words of Molina, on justice and right, treatise 2, disquisition 22, n. 9.—And of Victoria, in the dissertation on civil power, from number 6.—And of Bellarmine, on the laity, c. 6.

one body politic. Hence, in the second place, the community is not the primary source of power, but, at most, its immediate receptacle from God and the medium of its communication to the special persons who exercise it. Moreover, the very nature of the communication is not based on the mere arbitrary will of the community, but as the power originates from divine natural law and is entirely ordained to the common good, so also the manner in which the transferral of the power can and must be made to the sovereign or magistrate, is regulated by the same law according to the exigency of the same good. Whence it finally follows in the third place, that all the sequences from the above subversive system are entirely absent from the same doctrine of the old scholastics, for in this latter doctrine the sovereign or magistrate is in no way compared to the multitude as its instrument, and is not dependent on the people's whim as the standard of his governing; and, again, he is not instantly revocable at the people's beck. Finally, he is truly the minister of God for good, according to the word of the Apostle, because in whatsoever way he has been endowed with sovereignty, he always possesses authority which is known

to have been instituted by the divine law itself to govern the society. As they say, "thence comes it that all the legitimate powers which we are bound to obey, are from God, and that every power in its own order and degree holds the place of God, so that when we obey them, we likewise obey God in them, and execute the precept and will of God." Thus Molina (l. c., dissertation 27).

Let these principles remain thus safeguarded. We shall now leave aside the vagaries of those revolutionaries and consider only the questions about things which may still be doubtful within the limits of the sound and Catholic doctrine holding the divine origin of power. For the elucidation of these questions we first make the following assertion.

SECTION 2

Neither the Form of Political Government nor the Conjunction of Power with Any Persons or Rulers is Immediately from God, and Consequently in Civil Societies or Kingdoms there is No Person who Possesses Authority by Divine Right.

In the first place, note that political sovereignty can be considered in two ways: *either* precisely in

itself, as *some* supreme power of civilly governing the commonwealth, abstracting from this or that mode of government: *or* as determined to a species or form of government, monarchical, aristocratic, democratic, or mixed, which again may be diversified *ad infinitum*. There is a necessity to confess that civil power, considered in that first way, originates immediately from God, not indeed through a special and quasi-positive divine institution or donation altogether distinct from the production of nature by God, but through the natural sequence from the first making of human nature by God. The greater the necessity of confessing this, the greater the evidence manifesting that the determination of the various forms of government is derived from institution by men, and that human institution is the proximate principle from which those various forms are derived. For natural law alone and by itself does not dictate this form or that form in preference to another, and does not determine political sovereignty to be a monarchy or an aristocracy and so forth. For there is no assignable reason convincing that this or that definite form of government is necessary. This truth is corroborated

by facts. As Suarez rightly observes, (Defense b. 3, c. 2.) "various provinces or nations have chosen for themselves various forms of government, and there is not one of these forms which is contrary to natural reason or goes contrary to any immediate institution of God." Hence Leo XIII says in his Encyclical *Diurnum:* "Here there is not question of forms of commonwealths; for there is no reason why a government by one or by more than one, cannot be approved by the Church, provided the government be just and intent on the common utility. Whence, saving justice, peoples are not forbidden to make for themselves that kind of government which more fittingly suits their own character or the institutions and customs of their ancestors." Hence the following principle is evident. Power as power in general is from God the Author of nature, and yet power as power organized in this or that definite way, under this or that constitutional form, has been instituted by men. Hence also the following principle is evident. A government instituted by men is always legitimate provided it remains within the latitude which is permitted to the arbitrary will and liberty of men by natural law.

Since these things are so, there spontaneously follows what was laid down by us in the second place, namely, no persons whosoever who govern, are vested with power or sovereignty immediately by God. The reason for this is clear. Power comes to a special person or to special persons only according to the previously fixed form of the determinate political constitution, and indeed in such a way that the determination of the form according to which the power is held, is by its nature *prior* to the conferring of the power. How then would monarchical power, for example, come immediately from God to the person of the monarch, if, as has been said and as manifest reason shows, the constitutional monarchical form itself is not immediately from God? Some say, the determination of the form of government is a *mere condition*, and, in the supposition of the actual designation of the person of the monarch, under that as a mere condition the power is given immediately by God according to the measure and manner previously fixed by the positive institution of men. But what these thus say cannot be logically sustained. For they thus enact an investiture with power which investiture is not

discovered as notified by any written or unwritten law. And, what is more important to note, they invent some divine donation which would be beyond natural institution and posterior to natural institution. Whereas, in the present matter, there must not be recognized any other donation by God besides a donation which is within the limits of simple natural law and which is thence purely and simply a mere sequence from the first formation of nature by God. Hence it is necessary to conclude as follows: As institution by men is the *cause* determining to this or that form of government, the power which is from natural law: so likewise it is the *cause* deriving power to this or that subject by which it is received, and there is not and there cannot be any disposal by God more immediate in investing with power than in determining the special form of government.

In truth authority can be understood to exist in a particular member of society immediately from God in only two manners: either immediately from God positively granting something beyond nature, or immediately from God instituting nature itself and the things which necessarily follow from the principles of nature. But in the present

case the first manner is excluded, as has been just said, and as is evident enough from the essence of the matter, at least if we are speaking of the ordinary law. I say the ordinary law, lest someone may wish to oppose to us political institutions of the Old Testament among the people of the Jews. Most certainly those institutions must be recognized as *exceptions* to the ordinary law.

The second manner is likewise excluded. Because, in order that authority may come to a determinate person immediately from God as Author of nature, there must be some natural fact or natural property determining authority to a certain subject who shall possess it. Thus the natural superiority of the male sex determines authority in the man in the conjugal society. Thus also natural generation determines authority in parents in the society of the family. But you will search in vain for anything similar in political society and the reason of the difference is manifest. Indeed both the conjugal and the family society are established by natural right not only in general but also in particular, that is, as to its individuated and determined form, so that in them nothing whatsoever has been left for institution by men. But

political society is from nature only in general, and thus human institution, and will have to intervene as the proximate cause of its determination and also of the derivation of authority in definite persons to possess it according to a definite form of government.

Here we are met by an equivocation which is to be avoided and in which some seem to have been entangled. They say, "from the reasons set forth it follows only that political power is not given by God to any particular person or persons without the intervention of the will or action of men, but that this is not enough for it not to be given immediately by God. For the plenitude of power over the universal Church is given also with the intervention of the will of those who elect the Pope, and yet this plenitude is given immediately by God, as Catholic dogma teaches us." . . . But this example is so far from in any way weakening our line of argument that it rather strengthens our conclusion, as Suarez appositely notes (Defense, b. 3, c. 2, p. 16.) For we should diligently consider the reason and the manner of the intervention of the instituting or will of men in the case. For if this will intervene only as inducing into the subject or person the *title previously fixed*

by God to a power also instituted and instituted not generically but individually by God, it is manifest that the action of men does nothing but place a condition; and there will be no efficient cause whatsoever of the investiture with power but the divine law. And so it is in the election of the Pontiff, because divine law has instituted the papal power immediately and individually; and has tied it to a certain determinate title, namely, to canonical designation of a successor of St. Peter. Hence it comes that by the designation made, as by a condition placed, the person elected is immediately invested with authority, not in virtue of any law of men, and much less in virtue of the will of the electors, but in virtue of that divine disposition which will hold perpetually and which is contained in the words of the Lord to Peter: "Feed my lambs, feed my sheep." For they were said to Peter as he was to remain in his successors to the end of the world. Here therefore distinguish the concept of a cause from the concept of one placing a condition. But no such thing is discoverable in civil governments. In them God has not ordained *either* any determinate *form* of government or any determinate *title* to which investiture with

the powers of governing has been tied. Hence, for both, institution by men must supervene, and thence such institution by men is constituted the true and proximate *cause* of the investiture in all the supreme heads of commonwealths. (*Cf.* Suarez, Defense, book 3, chapter 2, page 17.) And because only that is called, and is, of divine right which is immediately constituted by a law of God or the will of God, and that is not called and is not of divine right which is proximately instituted by men, even though through a faculty given by God, it follows that it is by divine right that there be *some* who govern in civil society, but that *no one in particular* possesses authority by divine right. And this appeared so certain to the older scholastics that Suarez did not hesitate to write: "According to ordinary law, no king or monarch has, or has had, political sovereignty immediately from God or by divine institution. *This is a fundamental axiom of theology*, not by mockery, as King James set forth, but truly, because rightly understood it is most true and is most necessary for the understanding of the ends and limits of civil authority. And it is not a novelty or an invention of Cardinal Bellarmine which the aforesaid King

seems to ascribe to him. . . . *And this doctrine has been commonly held not only by the theologians but also by the jurists.*" And Bellarmine himself speaks still more explicitly against John Marsilius, in his reply to the third capitulum: "This is not a supernatural mystery or a thing that is based on opinion, but it is the common teaching of all the Doctors." Thus, therefore, by all means it is to be said that the conjunction of power with the persons who preside over the commonwealth has its proximate origin from the institution of men. And in this sense St. Thomas in 2. 2. q. 10 a. 10 asserts that dominion or prelacy has been introduced by the law of men. Now we must inquire in whom resides the right to institute a form of government.

Section 3

The Right to Determine the Form of Government and to Enact the Law for the Investiture with Power, is Originally in the Community; and the Doctrine of the Scholastics About Civil Sovereignty, Reduced to These Terms, is Found to be Most True.

This is a manifest conclusion from what has preceded. For if, for the constituting of a poli-

tical government of any kind, there is required an institution by men, this institution assuredly can originate only from the one who has the care of the community. But before the constituting of a legitimate government, the care of the community belongs to no one among men but the community itself. Therefore from the community must originate the law instituting the form of government and the investiture with power. For these reasons, St. Thomas, treating of law in general, says: "A law properly, primarily, and principally, regards the order to the common good. But to ordain something to the common good is the prerogative either of the whole multitude or of someone holding the place of the whole multitude, and thus to enact a law either pertains to the whole multitude or pertains to a public person who has the care of the whole multitude, because also in all other things to ordain to an end is the prerogative of him of whom that is peculiarly the end." 1. 2, q. 90., a. 3.0. In this passage there is to be noted the disjunction: *either* to the whole community *or* to the public person who has the care of the community. But, as is manifest, the fundamental law instituting the form and manner of a

commonwealth and investing a sovereign with that authority by which he is made a public person cannot by any means originate from that same sovereign. It remains then that to the community belongs the power which moderns call *constitutent* and from which proximately emanates in the person of the sovereign the right of governing. But note well how it is not required that, by way of formal suffrage, especially according to arithmetical calculation, this power be reduced to actuality. For unless we wish to invent an imaginary world we must see that political constitutions, and especially those which are solid and stable, for the most part are reduced to what is called *custom* in which the reasonable will, making law, is expressed by usage and practice. "Every law emanates from the reason and will of a legislator; the divine positive law and the natural law from the reasonable will of God; but human law from man's will regulated by reason. But as the reason and will of man are manifested, in things to be done, by word, so also they are manifested by deed. For each one is seen to choose as good that which he fulfils by his works. But as is manifest, a law can be changed and also expounded by human words in as far as

they manifest the interior movement and concept of human reason. Whence, too, also by acts, especially multiplied acts, which make a custom, a law can be changed and expounded, and also something can be caused which obtains the force of law, namely inasmuch as by exterior multiplied acts the interior movement of the will and concept of reason are most efficiently declared. For when a thing is done very often it is seen to emanate from the deliberate judgment of reason, and according to this, custom has the force of law and abolishes law and is the interpretress of law." St. Thomas 1. 2. q. 97, a.3.[1]

Indeed it rarely happens that a peoo'e enacts for itself its form of government by an agreement, but

[1] At the end of this article the Angelic Doctor adds: "A multitude in which a custom is introduced can be of a twofold condition. For if it is a free multitude which can make a law for itself, the consent of the whole multitude to observe the thing which custom manifests, is *more than the authority of the Sovereign, who has the power to make a law only inasmuch as he holds the place of the multitude;* whence, although single individuals cannot make a law, yet the whole people can make a law. But if the multitude has not the free power of making a law for itself, or of removing a law placed by a superior power, still a custom prevailing in such a multitude, obtains the force of law inasmuch as it is tolerated by those to whom it belongs to impose a law on the multitude, for from this itself these are seen to approve what the custom introduced."—*Translator.*

generally governments are prepared and introduced by facts themselves depending on an almost infinite variety of circumstances; afterwards the adhesion of the peoples by their usages to these governments gives to these governments a juridical existence, makes of a *de facto* government a *de jure* government. Nor does it matter how the governments began, namely, whether the occupation of power preceded through unjust violence or through normal evolution. Since in every case, that occupation does not pass into legitimate institution except by the community's consent which is always of the same nature and always has the same efficacy. And it seems that an exception is not to be made even for the right of war. For how from war, even when just, political dominion can be directly acquired, is not at all apparent; since political dominion is understood to be ordained not to the good and advantage of those who dominate, but wholly and entirely to the good of those who have been subdued. Whence in fine this and only this can be directly effected by the right of war, namely, that the vanquished people by losing its own autonomy is made a part of another people. But from the moment it begins to be a part, by

consequence it obtains the condition of a part, and by this it is drawn to the pre-existent government of the whole. I wish these observations to be understood as made about matters in general, lest the doctrine thus far asserted seem to contradict the historical origins of most of the civil societies. For this is the main disadvantage which our adversaries object, but without good reason. For our position would contradict history only in so far as we would place the formal and express suffrage of the multitude at the head of all constitutions. We have done no such thing. Indeed we do not even advocate this method as the best of all and as the one more in conformity with reason, especially if universal suffrage is understood in the sense of many moderns. As cannot be denied, that method has an absurdity on its face. It makes all suffrages equal according to the numerical distinction of persons. Whereas the weight of suffrage is to be estimated rather according to the grade which the very nature of things assigns to each individual in the community and, speaking universally, when there is question of the reasonable will of the multitude, it is not of the more numerous but rather of the saner

and better part that account is to be taken. But these points appear rather irrelevant to our question, especially if one again fixes his attention on this, that the legitimacy of a government depends not so much on the original fact of its introduction, as on its subsequent use by the multitude and also on the tacit assent of the multitude to it.

However, there remains one observation to be made. When it is said that political power is immediately from the people, this can be understood in two manners. *Either* from the people previously possessing in virtue of natural law the power itself of government and then as it were abdicating and transferring that power through a donation or contract, to those who preside over the commonwealth; *or* from the people only constituting the law in virtue of which authority of government (which authority from pure natural law as yet consists in a certain indetermination), is determined to such or such a form and is derived to such or such a possessor of that authority. Quite a number of theologians seem to understand the case in the former manner. In Defense (book 3, chapter 3,), Suarez says: "After the people has transferred its own power to a king, it cannot

justly, relying on that same power, claim its liberty back at its own *arbitrary* pleasure or as often as it wills. For if it has granted its own power to a king and he has accepted it, by the fact the king has acquired dominion. Thence although it has been from the people that a king has had that dominion through a donation or contract, this is not a reason why it will be right for the people to take away that dominion from the king or to again usurp its own liberty." In this way of speaking, the people would have to the prince the relation of a personality despoiling itself of its own thing and transferring its dominion over that thing to another. But this concept does not appear to be altogether admissible. First, because the instituting of a government is nowhere conceived as an abdication by the community, since by thus instituting a government the community not only does not lose what was its own, but rather acquires what was necessary for itself. Secondly, because, it is hard to see how by the law of nature there exists a faculty which can scarcely ever, if ever, be exercised. Now, as Suarez himself confesses, (de Legibus, L. 3, c. 3 near the end)"natural reason dictates tnat it is not necessary, and even

that it is not fitting, for nature to have this power (of government) unchangeable in the whole community; for it can scarcely use it, thus understood, without adjoining some determination or making some change." Thirdly, and especially, because this way of speaking destroys the principles on which all this present doctrine is entirely founded. For the foundation of the doctrine is this: natural law determines no form of government in particular and gives to no determinate person as its possessor the power of governing. From this it immediately follows that there is always necessary human institution as the proximate reason of the determination both to a manner of government and to a possessor of authority. But now if you say that precisely the very power which is transferred to princes or magistrates, is previously in the people immediately in virtue of the law of nature, you thus destroy the principle and construct for yourself an arbitrary system. For by the fact, the democratic form becomes the primitive, congenital form directly instituted by God in every civil society, even though you grant that it was that instituted not to be necessarily permanent but to be able to be changed into another

according as might seem expedient for the common welfare.

But from all these inconveniences or even contradictions is far distant the other way of speaking according to which not political power itself, but the right of determining the legitimate form of government and the legitimate way of investing with governing power, is asserted to be naturally in the people. For thus there is no need of inventing an imaginary abdication by the community. Thus there is no advocacy of a power naturally deriving to a possessor who for the most part is not fit to exercise it. Thus in fine there is not inculcated democracy as the primitive form which was gradually transmuted into other forms, but all the forms are equally from human right or law, because all equally remain to be determined through the consent of the community, although some are excelled by others in their greater or less conformity with nature absolutely considered, and under this consideration it is not democracy that excels rather than monarchy, but it is monarchy that excels rather than democracy.[1]

[1] "Properly speaking, all governments are monarchies differing only by the monarch being for life or for a time, hereditary or

The difference between those above-mentioned two ways of speaking may be illustrated by an example taken from the law of property. In two ways I may receive dominion over a thing from another person. *Either* from another as the rightful possessor who now makes mine a thing which was his, as if Titius would donate to me his field;

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eligible, an individual or a body. Or if you wish (for it is the same thing in other words) every government is aristocratic, composed of more or of fewer dominating heads: from democracy in which this aristocracy is composed of as many heads as the nature of things permits, to monarchy, in which the aristocracy inevitable in any government is dominated by one head which terminates the pyramid and without doubt forms the government most natural to man. But of all monarchs, the hardest, the most despotic, the most intolerable, is the monarch people. History bears witness to this great truth, that the liberty of the small number is founded only on the enslavement of the multitude, and that republics have never been anything but sovereigns with many heads, and that their despotism, always harder and more capricious than that of monarchs, increased in intensity in proportion as the number of heads multiplied." J. de Maistre. *A Study on Sovereignty*, c. 6.

Footnote by the translator:

We see no reason against admitting that democracy is the primitive, congenital form of government directly instituted by God in every civil society, although it has not been thus instituted to always remain permanently but to be able to be changed into another form according as may seem expedient for the common good. In this we do not concur with Cardinal Billot. Neither do we concur with de Maistre in his pessimistic interpretation of the history of democracies.—

or from another as from the immediate author of a law by which dominion is acquired, as if, in virtue of prescription enacted by the civil legislator, I began to be the owner of a piece of land which before did not belong to me. That magistrates derive their power proximately from the people, is explained by most of the older scholastics according to the analogy of the former example. But we think that we should found the explanation rather on the second example. However, these points concern only the deeper understanding of the doctrine, and maybe this is a fight more about words than things, because the substance of the thing is reduced to this, that forms of government and titles to exercise power, and power itself, as existing in determinate possessors of it, are not immediately from God but only through the medium of human consent, that is, the consent of the community. And from what has been said it appears that this opinion reduced to these terms reposes on most solid foundations.

Our adversaries object to use the words of the Encyclical *Diuturnum:* "*It is important to bear in mind that those who are to preside over the commonwealth can in some cases be selected by the will and*

judgment of the multitude, Catholic doctrine not being adverse or repugnant to this. By which selection, indeed, the sovereign is designated, the rights of sovereignty are not conferred and authority is not given but it is enacted by whom it is to be held."

But in these words it is impossible to discover anything that is, in any way whatsoever, contrary to the teaching above set forth. In fact there is here exposed the pure and simple doctrine of faith against the pernicious novel opinions with which very many were infatuated in the sixteenth century and which finally led in the eighteenth century to the monstrous error of the social contract from which error, the Pontiff says, "dissent Catholic men who derive the right of governing from God as its *natural* and *necessary* principle." Thence it is denied by the Pope that by the selection by the multitude there are ever conferred the rights of sovereignty in the sense of those who oppose Catholic doctrine, saying that from the people comes the right of sovereignty according to itself, and not merely according to its contingent and variable forms or the contingent and variable titles to its possession. It is also denied by the Pope that by the same selection by the multitude,

there is given authority; and again this is against those who fancying that civil society was born from the free consent of men, derive the origin of authority from the same source, and who subject authority itself to the multitude after the manner of an instrumental power which flows from a supreme commissioner to one commissioned. In a word, there is here denied by the Pontiff what has been denied in all times with unanimous consent by Catholic theologians. And there is the same idea in the things which are affirmed by the Pope, namely, that by selection by the multitude the sovereign is selected or that it is enacted by whom authority is to be held. For in this generality of words we all agree. For once it is asserted that *authority in itself* has been constituted not by human but by divine natural right, by the fact there is nothing left for human will or action but the determination and designation of the ruler. However, we must consider that designation of the sovereign can be of the sovereign taken *merely materially* or *also formally*. It will be designation of the sovereign taken *merely materially*, if the designation falls only on the material possessor of sovereignty and in no way on the measure of

power or the title to its investiture, as if there were only designated a person to succeed in a dignity instituted by God, in entirely the same measure in which the dignity was instituted by God, and without any authority to change, increase, lessen or modify that dignity or office in any way. But it will be a designation of the sovereign *taken also formally*, if the designation falls also on what belongs to the sovereign as such. In this latter case, the author of the designation is by the fact the proximate cause, not indeed of power as such, but yet of the conjunction of power with such a person according to such or such a measure and such or such conditions. And thus from first to last, through this thing which is said by the Pope (namely, by the selection by the multitude the sovereign is designated, the rights of sovereignty are not conferred), there is not removed from the community the power which is truly constitutive of government, any more than there would be removed from civil sovereignty the power truly creative of law by saying: *through civil legislation there is designated what is to be observed as just, there is not conferred the very nature of justice.* Since the nature of justice is always from the natural

law, and yet civil legislation by designating one manner of what is just from among all the manners which are not repugnant to natural law, is called, and truly is, the proximate cause of what is right. Thus from the objected passage nothing follows, because in it everything centres in this, namely, that power or sovereignty be understood to emanate *from God as its august and most holy source* and that all be persuaded that *they who resist political power, resist the divine will; that they who refuse honour to sovereigns, refuse it to God Himself.*[1]

But you may say, "our opinion on civil sovereignty is excluded at least by the nature of the

[1] The standard which we have here followed is set forth much more explicitly by the same Pope Leo XIII in the Encyclical dated February 16, 1892, written in French and beginning with the words *Au milieu des sollicitudes:* "This form (of political power) is born of the collection of circumstances which are historical and national but always human and which *cause* to arise in a nation its traditional and even its fundamental laws; and by these circumstances such or such a particular form of government, and such or such a basis for the transmission of the supreme powers, find themselves determined." And in his apostolic letter to the French Cardinals, of May 3, 1892, he said: "Although political power is always from God, it does not follow that the *divine designation* always and immediately affects the manners of the transmission of that power, or the contingent forms which it puts on, or the *persons* who are its possessors. Even the variety of those manners in different nations shows with evidence the human character of their origin."

matter. Because in the moment prior to the institution of a government, there is not yet any constituted society, and, on account of this, society as such cannot either enact or confer. Then, because if political power is from God in any way whatsoever, it must be from God in some determinate and concrete subject or possessor, unless you fancy power, as it is from God, subsisting in itself, that is, not in any person or possessor. Then, finally, because your way of speaking is a foundation for seditions, and this foundation will be most avidly seized upon by the factious and rebellious, since the people would have the right to rise against their sovereign and claim independence of him whenever it seemed proper to them, basing their action on the rights and power which they transferred to the King. This objection is corroborated by facts. For all these disadvantages have been shown up by our mournful experience. The ancient scholastics did not have this experience under their eyes, else they would never have gone astray into that opinion which lends a handle to so many and such great abuses, and seems in its entirety to favour the fancies of disturbers of the commonwealth."

Such are the objections commonly made by those recent authors who wish that the power of sovereigns be derived immediately from God. But in truth none of these objections demonstrates the soundness of their opinion. To the first objection I reply: In the moment prior to the institution of a government there exists a society constituted, not indeed ultimately and in perfect actuality, and yet in potentiality, whenever there is present a determinate multitude of men who are found gathered in a body to help one another for one political end. Moreover I say that in this primary constitution of society there is nothing lacking in the order of means for the effect in question. For unless we wish to fancy that civil societies individually have been immediately instituted by nature, we must necessarily recognize the existence of some constituting power in communities of men. Therefore we must recognize the existence of this power in communities according as they exist in the first stage of political society. From this it follows manifestly that before the institution of a government, there is already at hand a social power, not indeed for governing that society, and yet for constituting, in the way already said,

sovereignty from which the governing power is derived.[1]

And in this our adversaries cannot but agree with us. For they say that it is the community that designates the subject or possessor on whom God immediately confers power. But I ask whether that designation is, or is not, made by a political society. If it is not made by a political society, then the designation made will not exact power emanating directly from God, any more than if one private individual or a small mob designated Titius to be the Pope or the king. They say, besides, that the determination of the form (monarchical, aristocratic, democratic), ought to

[1] To secure inalienable natural rights, "governments are instituted among men deriving their just powers from the consent of the governed." The governed by their consent make their constitution or fundamental laws, and thus exercise the law-making power which has been called the *summum imperium* and they say authoritatively to each main functionary of the executive, judicial, and legislative branches of the government, "so far shalt thou go and no farther." This action, prior to the exercise of ordinary authority by the executive, supposes the highest authority to have already existed in the concrete and not only in the abstract and in general. The multitude can rarely, if ever, exercise the *executive* authority, which, however, is not the only or the highest authority. We see no difficulty in admitting these principles. They have long worked well in the United States and in each one of our sovereign states. Translator.

be made by the community, at least as the pre-established norm to which God conforms in the immediate donation of power. But again, I ask, has that previous designation of the form, the force of law, or has it not the force of law? If it has not, then neither is it a social institution which precedingly fixes the kind and measure of social power. If it has, then some statute *can* emanate from a society, as such, antecedently to the constituting of government. Therefore, here, our adversaries, whether they will or not, are forced to agree with us, because the only difference between us is this, that they consider that social statute as only a mere condition previous to the special donation by God. But we, considering that in the present case no such fiction is to be invented, accept that same statute as the thing by which is determined the general donation of natural right to a particular subject or possessor according to a particular form of political government.

To the second objection Suarez and those who think as he does, would reply, that political sovereignty in as far as it is from God, is immediately in a concrete subject or possessor, namely, in the

community itself, by which it is afterwards retained, or is transferred to one monarch, or to a college of the best. But leaving aside this way of speaking, in consequence of what has been said above, I say that power of jurisdiction is not to be likened entirely to physical forms which, unless they exist in some determinate subject, do not exist at all. For else, for example, when the Pope is dead and the Holy See is vacant, it must be said that the papal power is altogether extinct, which is absurd. Thence it must be borne in mind, that a power exists in two ways, either as instituted, or as held; and indeed so that it is conceived as instituted before it is held. Now *as held*, it requires some determinate subject or possessor, as is evident from those terms themselves; and yet, as *instituted*, it does not require this same, because, as such, it exists only in the ordinance of reason made by the superior. Now because nothing hinders a thing from existing by an ordinance of reason in a generality to be further determined through subsequent ordinances, not only there is no need that power, as immediately instituted by God, be actually located in some moral or physical person, but not even is

there any need that it imply a definite order to particular persons or particular conditions of persons. For all things concerning either the form of government or the tying of political power by titles to its possession, have been left to the ulterior determination of men. Hence, if you ask, where is political power, as immediately instituted by God, I reply: In the law of nature or in the ordinance of the divine reason which is manifested by the condition of human nature, and which is seen written in the minds of men. But since this ordinance is located in a certain generality, there is place for ulterior determination by men, so that at the same time the following things are true: Whoever in particular is a holder of political power, holds it by human law as by its proximate source; and yet power is by no means from men under the concept of civil power as such, but only (as has been above often said) under the concept of a determination to such or such a form and of a derivation to such or such a possessor or subject in which it inheres.

With regard to the third objection, at the outset I note that in the present case *abuses* ought not to be a reason for us to be troubled. There is no

doctrine that cannot be abused. But no doctrine ought to be condemned on account of its abuse. All who speak of abuse of a doctrine, mean consequences not rightly drawn from that doctrine. It is very hard to tell which one of the opinions here discussed, has lent a handle to greater or more detestable abuses. Certainly all the *regalists*, from the principle that kings derive political power immediately from God, judged it necessary to conclude that kings as such have supreme independence or irresponsibility. Then, from this start, going on, step by step, they extended the powers of civil sovereignty even over religion, until they developed their doctrine to its full evolution, when, kings by divine right having been rejected, there was retained the sole preponderance of the State, which, in their eyes, was the sole existing fountain-head and arbiter of absolutely all rights.[1]

[1] This State-absolutism has no place in the principles of our Declaration or our Constitution. "We hold these truths to be self-evident: that all men . . . are endowed *by their Creator* with certain *unalienable* rights. That to *secure* these rights, governments are instituted among men, deriving their just powers from the consent of the governed."

Amendment V: "No person shall . . . be deprived of life, liberty, or property without due process of law; nor

Thus as the possibility of abuses is not absent from either side, all that is left is to abstract altogether from abuses and to seek only what truly follows from principles. Now the foundation for rebellion is radically taken away by every doctrine which asserts that there is a divine precept of obedience to constituted powers. Now this precept often inculcated by the Apostles, is not only not taken away or in any degree lessened, but is more strongly defended, against the subversive error of the social contract, by our doctrine. For from political powers not being immediately constituted by God in the sense above explained by us, it by no means follows that there is not a precept of God, or even that there is not an immediate precept of God, for us to obey those powers. And conversely, from God having commanded us to obey our superiors, it by no means

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shall private property be taken for public use without just compensation."

Amendment X: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

As the reader has seen, our cherished fundamental principles and even our terminology are the same as those used by Father (now Cardinal) Billot in lectures delivered in the Gregorian University, Rome, under the eye of Pope Leo XIII.—*Translator.*

follows, that a sovereign is made a sovereign immediately by God, or that he was, immediately by God, constituted a superior over these or those individuals. As Bellarmine says (against John Marsilius, response to the third capitulum) "if Marsilius does not understand this, I cannot give him any remedy except by praying to God for an immediate grant to him of more light than hitherto has been his." Therefore our doctrine does not supply a pretext to the factious and rebellious, as it is always true that every soul ought to be subject to the higher powers, and that he resists the ordinance of God who resists constituted power.

But neither from our assigning the consent of the community as the proximate principle of the investiture of rulers, is there a legitimate sequence that at the whim of the multitude one government can be deposed and another instantly substituted. For here there is not a question of nude will which is independent of the higher law, but of a will which has the conditions necessary for every law that is rightly called a law. Now nude will is nowhere said to be creative of a law. A will which does not follow the order of reason, has no validity and cannot have it. However, I beg our ad-

versaries not to conjure up imaginary suppositions which have no home in our sublunary world. Let us remember that changes of governments, and changes introduced in either licit or illicit ways are the unavoidable consequence of the instability of human institutions, and that this instability cannot ever be eradicated by any force or any theory. Let us remember also how sweetly dream all who aim at freeing human affairs from being burdened with any inconvenience, as if we were now dwelling in the heavenly court among angels. Indeed after making such suppositions as are suggested not by platonic speculation but by the necessity of these matters, perchance you will understand which doctrine is the more considerate of the peace and prosperity of the commonwealth. Is it the doctrine thus far set forth by us, or is it forsooth that other doctrine which grounds itself on a preposterous conception of legitimacy and appears to recognize in dynasties of kings a right as immovable as in the succession of the Popes to the Apostolic See? But the evidence of this matter will be shown still more by our exposition of the following assertion on which rests the final conclusion of this disquisition.

SECTION 4

The Right to Establish a New Form of Government and a New Investiture with Power, is Always in the Community in so far as the Need of the Public Good Demands, and on Account of This Cause, Generally Speaking, Every Government to which the Community Pacifically Adheres, is to be Held as Legitimate.

The substance of our demonstration is in this, namely that the right of sovereignty is unlike the right of property, and that by its nature it is ordained, not to the good of him who holds sovereignty, but purely and simply to the good of the society over which sovereign power is exercised. Thence, as it immediately follows according to an evident and most certain dictate of reason, in the present matter it is of the public good alone that account is to be taken, so that if at any time this necessity itself of the public good require a new form of government and a new investiture of rulers, no pre-existing right of any person or any family can validly prohibit this change. It follows also that this new constituting of a legitimate government belongs to the same individuals to whom

the previous constituting belonged, and through this, that the so-called constituent authority always in habit or potentiality remains in the power of the community, which authority, however, neither ought to, nor can, come into use rashly and whimsically, but only as often as its use is demanded by the supreme criterion of the common good and the necessity of the public social tranquillity.

But someone perhaps may ask, when will there be verified that evident exigence of social necessity? We reply, there is no need to seek a response from far off or to fly to metaphysical cases. For without any doubt the aforesaid necessity is verified whenever from any preceding cause the form of government has been destroyed and there has, *de facto*, been introduced a new government which now cannot be taken away in any manner or without detriment to peace. And mark how it has been said, *whenever from any preceding cause the antecedent government has been destroyed*, so that no exception is made even for the case in which with supreme iniquity the government has been expelled and extinguished by the factious and rebellious. For here there is no question of the morality of

antecedent deeds or of the causes from which it has come to pass that an ancient constitution no longer finds a place in the commonwealth; but there is question only of what, here and now, given all the circumstances which actually exist, is required by the supreme law of the common good. Now from this supreme criterion it is clearly apparent, that the community is endowed with the same right as before with regard to the instituting of sovereignty, and thus that the community's pacific consent to the new government will have the same force of legitimate investiture which it had before in the first origins of society. Thence finally follows the conclusion that, generally speaking, every civil government is to be held to be legitimate from the moment when it has been constituted and accepted and regularly exercised. Advisedly, however, I have said *generally speaking*, lest, by an absolute universality in the assertion, the civil sovereignty of the Roman Pontiff may seem to suffer any detriment, for its condition is special and altogether unique. For his sovereignty is ordained not only to the temporal welfare of his civil subjects, but also indirectly and yet truly, to the spiritual good of the whole of

Christendom. And thus there is no wonder if principles which otherwise hold good for political changes, have not the same application here. But here we should abstract from these points. For this matter is left to be explained in the inquiry into ecclesiastical immunity; and besides, when general principles are being treated, it is not the time to wander far out of the path, to most singular cases.

Finally our conclusion receives corroboration from the ancient and immemorial practice of the Church. In all governments of whatsoever origin, once they had been constituted and had been confirmed by the consent of peoples, she recognized true political power. I say true power which emanates from God as its august and most holy source; and towards which all Christians are bound by an obligation of conscience and to which they should even take an oath of allegiance when there is need. And this is the power which the Apostle had in mind when he ordered to be made in the Church, *supplications for Kings and for all who are in high station that we may lead a quiet and peaceful life in all piety and chastity.* And this perpetual practice and discipline of the Church,

in fine has been illustrated by a doctrinal declaration of Leo XIII in that memorable Encyclical to the French, *Au Milieu des Sollicitudes*, from which in this discussion we have taken care to depart not even one hair's breadth.[1]

[1] The principal passage of the Encyclical referring to our subject is as follows: "As to purely human societies, it is a fact engraven on a hundred occasions in history that time, the great transformer of all things here below, works profound changes in their political institutions. On some occasions, it confines itself to modifying something in the form of the established government. On other occasions, it goes so far as to substitute to the primitive forms others totally different, without excepting the mode of transmission of the sovereign power. And how do these political changes of which we speak, come to be produced? They sometimes follow violent upheavals, too often bloody, in the midst of which pre-existing governments disappear in fact. Behold anarchy then dominating. Soon public order is overturned from its very foundations. From that moment a social necessity imposes itself on the nation which has the duty to provide for itself without delay. How would it not have the right and, moreover, the duty to defend itself against a state of things which troubles it so profoundly and to re-establish public peace in the tranquillity of order? Now, that social necessity justifies the creation and the existence of new governments, what form soever they may take, since in the hypothesis about which we are reasoning, these new governments are necessarily required by the public order, all public order being impossible without government. It follows from this that in similar conjunctures all the novelty is confined to the political form of the civil powers or to their mode of transmission. It in no way affects the power considered in itself. This continues to be immovable and worthy of respect; for, considered in its nature, it is constituted and imposes itself to provide for the common good, the supreme end

which gives its origin to human society. In other terms, in every hypothesis, civil power considered as such, is from God and *always* from God, for there is no power but from God. Consequently, when new governments which represent this immovable power, are constituted, to accept them is not only permitted, but demanded and even imposed by the necessity of the social welfare which has made them and maintains them. . . . And this great duty of respect and dependence, will continue as long as the exigencies of the common welfare shall demand, since this welfare is, after God, in society, the law which is first and last. By this is explained the wisdom of the Church in the maintaining of her relations with the numerous governments which have succeeded each other in France in less than a century and never without violent and profound shocks." . . . In conformity with these principles are the things said by the Pontiff in his letter to the French Cardinals on the same subject:

"Accept without afterthought the civil power in the form in which it actually exists. When there exists in a society a power which has been constituted and has been put to work, the common interest finds itself tied to this power, and there is a duty to accept it such as it is, as representing the power which has come from God."